

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481-rdd

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In the Matter of:

DELPHI CORPORATION,

Debtor.

- - - - -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

July 29, 2009

3:22 PM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

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HEARING re Doc #16646; Motion to Approve (A) Supplement to
Motion for Order (I) Approving Modifications to Debtors' First
Amended Plan of Reorganization (As Modified) and Related
Disclosures and Voting Procedures and (II) Setting Final
Hearing Date to Consider Motion..

HEARING re Doc #14310; Motion to Approve Motion for Order (I)
Approving Modifications to Debtors' First Amended Plan of
Reorganization

HEARING re Doc #18668; Proposed Agenda for Plan Modification
Hearing (related document(s) [16646])

HEARING re Doc#18674; Response

Transcribed By: Clara Rubin, Esther Accardi and Dena Page

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P R O C E E D I N G S

THE COURT: Okay, in re: Delphi Corporation.

MR. BUTLER: Your Honor, good morning. Jack Butler, along with a number of my colleagues, including my partners, Kayalyn Marafioti, Al Hogan, Ron Meisler, Eric Cochran and John Lyons, here on behalf of Delphi Corporation for its plan modification hearing.

Your Honor, today, we are asking you to consider a series of modifications to the plan and confirmation order. As that confirmation order was entered on January 25, 2008 at docket number 12359. Your Honor, this hearing represents the culmination of a tremendous amount of work by a tremendous amount of parties. Since the plan investors did not consummate the original first amended joint plan of reorganization of Delphi Corporation and its affiliated debtors and debtors-in-possession back on April 4th of 2008. As is customary, Your Honor, in at least these cases, and I think, in Your Honor's court, we are not going to -- the debtors are not going to make any kind of an extensive opening statement. We have a fair amount of business to transact, in terms of getting things into the record and addressing a variety of issues, including some 1900 plus objections that have been filed, many of which have been resolved, but still need to be addressed. And so I will, Your Honor, at the appropriate time, toward the other end of this hearing, ask for the opportunity to make a closing

1 argument and present Your Honor, really, the debtors'
2 perspective on what's transpired in these cases since January
3 25th of last year.

4 THE COURT: Okay.

5 MR. BUTLER: Your Honor, before moving to the formal
6 presentation of our case in chief, asking Your Honor to approve
7 these plan modifications under Section 1127 of the Bankruptcy
8 Code, I would like to introduce some of the principals that are
9 here today in court on behalf of the debtors that will be
10 presented as witness in this 1127 hearing. I'd ask them -- you
11 know many of them, but I'd ask them, please -- the witnesses to
12 please stand when they're introduced.

13 First is Mr. Craig G. Naylor who's been a member of
14 our board of directors since 2005 and is the board's lead
15 independent director. Mr. Naylor will offer testimony with
16 respect to the board of directors' approval of the modified
17 plan and the underlying transactions. Is he in the courtroom
18 at the moment? Our witnesses actually need to come in here, so
19 you should get them. So Mr. Naylor will be testifying, as
20 well. And I assume that's where Mr. Miller is, as well? There
21 he is.

22 Second is Mr. Robert S. Miller, Jr. Mr. Miller is the
23 executive chairman of the board of directors of Delphi
24 Corporation. He was the chairman and chief executive of Delphi
25 when Delphi and its subsidiaries filed these Chapter 11 cases

1 and continued in that role until December 31, 2006 when the
2 board and he turned the reins of the CEO role over to Rodney
3 O'Neill. Mr. O'Neill has led the company since that time,
4 together with Mr. Miller in partnership as Mr. Miller has
5 retained the role of executive chair. And Mr. Miller will
6 testify to a number of issues today, including the major
7 objectives of the debtors' Chapter 11 cases, and the debtors'
8 role in the global automotive industry as well as the business
9 judgments that have been exercised by the debtors.

10 THE COURT: Okay.

11 MR. BUTLER: third person I'd like to introduce -- who
12 you know well -- is Mr. Sheehan. John D. Sheehan is the vice-
13 president and chief financial officer of Delphi Corporation.
14 He's been before this Court on numerous occasions to offer
15 testimony in the past. Today he will offer testimony with
16 respect to the negotiations and due diligence conducted in
17 connection with the debtors' entry into the MDA and related
18 auction process as well as the results of the auction process
19 that was conducted over two days earlier this week. And he
20 will offer testimony in support of the various confirmation
21 requirements under Chapter 11 of the Bankruptcy Code as 1129 of
22 the Code is referenced within Section 1127, and therefore,
23 relevant to this hearing.

24 The next witness is Mr. Keith D. Stipp. Mr. Stipp is
25 Delphi's executive director in charge of restructuring, and he

1 will offer testimony with respect to the MDA, the modified
2 plan, and the reorganized debtors' postemergent state
3 operations and feasibility issues associated with that.

4 THE COURT: Okay.

5 MR. BUTLER: And our two outside financial advisors
6 who have been involved from the beginning of these cases.
7 First Mr. Shaw, William R. Shaw, is a managing director at
8 Rothschild, Inc., a financial advisor, investment banker to the
9 debtor, to Delphi, and has been the debtors' lead strategic
10 financial advisor. And he will offer testimony in connection
11 with the debtors' analysis of the transactions that have been
12 considered over the last number of weeks by the debtors.

13 And Mr. Randall S. Eisenberg is the senior managing
14 director at FTI consulting, the debtors' restructuring and
15 financial advisor, and he will offer testimony to, among other
16 things, the best interest test that needs to be revisited under
17 Section 1129 today.

18 Your Honor, what I'd like to do next, if I can, is
19 address the evidentiary record, and then I'm going to come back
20 and talk about voting and a number of other issues.

21 THE COURT: Okay.

22 MR. BUTLER: Your Honor, in support of the debtors'
23 case in chief, we have prepared a comprehensive joint exhibit
24 list that has been reviewed with the principal stakeholders and
25 what were formerly the principal objectors to this matter -- to

1 this motion, and from most of which we've now resolved their
2 objections. The exhibit list has 634 documents listed, and the
3 documents are divided into 38 categories, as outlined. I'm not
4 going to go through each of the categories. I will offer the
5 declarants whose declarations we're going to put into evidence,
6 I will offer those for cross-examination and any questions that
7 the Court may have. Before I move entry of these exhibits and
8 determine whether there are any objections to them, I do want
9 to make two statements about today's record. And this record,
10 this really applies -- well, let me deal with them in order.

11 First, I want to state as follows. That, if Your
12 Honor approves our 1127 motion, today, and there's a subsequent
13 termination of the MDA, and in connection with the parties'
14 reservation of rights there under, the parties to the MDA will
15 not be prejudiced by their support of the transaction at this
16 hearing or by the evidentiary record established at this
17 hearing, and in that event, all parties reserve their rights to
18 supplement and/or challenge the evidence submitted in any
19 further proceedings. As Your Honor must surely understand,
20 this is an extraordinarily complex series of transactions.
21 There have been agreements reached and bridges built across
22 disparate interests in this case. And those agreements all
23 center around the transaction that we're bringing -- the
24 debtors are bringing before the Court today. If that
25 transaction somehow falls away, people don't want to be

1 prejudiced and want to be back to their original positions.
2 And they don't want the debtors, or frankly, anyone else, to
3 use the evidentiary record at today's hearing as a -- either a
4 shield or a sword in whatever might happen in that unlikely
5 event.

6 THE COURT: Okay. On the record, also, the debtors
7 have, in their motion, sought an alternative if approval under
8 1127 isn't granted, the alternative being a sale under Section
9 363. Is it their intention that this record serve as the
10 record for both requests?

11 MR. BUTLER: Your Honor, it would serve as the record,
12 but the debtor is to be clear. The debtors are not moving
13 forward on the 363 motion. And we would view this hearing to
14 really be in two parts, two stages. We intend to present our
15 1127 motion first and seek Your Honor's approval of that
16 motion. And if we fail in that effort, we would then ask for a
17 brief recess and we would then proceed with a 363 motion, the
18 alternative relief under this motion.

19 THE COURT: Okay.

20 MR. BUTLER: But we're not -- and we would rely on the
21 same exhibits, the same record.

22 THE COURT: You would?

23 MR. BUTLER: We would --

24 THE COURT: Okay.

25 MR. BUTLER: -- for those matters.

1 THE COURT: All right.

2 MR. BUTLER: We may actually supplement it in a few
3 ways at that time, that are -- some things that are unique to a
4 363 -- a stand-alone 363 set of transactions. And certainly
5 some of my argument would be different in that circumstance,
6 but we would apply this evidentiary record to that alternative
7 relief if we have to go there.

8 THE COURT: Okay.

9 MR. BUTLER: Similarly, Your Honor, with respect to
10 our plan investors, Appaloosa has filed a limited objection and
11 there are various joinders to that, at docket number 18345,
12 18347, 18348, 18349, 18350, 18675, and 18677, and there may be
13 a few that I didn't note in terms of the filings made on behalf
14 of the plan investors. I simply want to indicate, Your Honor,
15 the debtors' acknowledgement that this evidentiary record is
16 not to be used as any kind of either sword or shield in the
17 adversary proceedings that are currently before the Court in
18 the adversarial proceeding litigation involving the plan
19 investors. So that the findings we're asking Your Honor to
20 consider making today and the record today could not, on its --
21 in terms of the record of the findings, be used as findings of
22 the Court in that litigation.

23 THE COURT: Okay, that's fine. Before you go on, I
24 know there are a number of people standing here and apparently
25 our overflow room overflowed. So there's an additional room,

1 Room 701, if you -- with audio and video, if you would prefer
2 not to stand and would only be watching, in any event. Okay.

3 MR. BUTLER: So, Your Honor, with those two
4 understandings, at this time, Your Honor, the debtors submit to
5 cross-examination on specific witnesses that I will deal with
6 in a few minutes. But the debtors would move for admission all
7 634 documents listed on the joint exhibit index.

8 THE COURT: Okay. Does anyone have any objection to
9 their admission?

10 MR. FOX: Edward Fox, Your Honor, for K&L Gates on
11 behalf of Wilmington Trust Company as indentured trustee. Your
12 Honor, with respect to the plan modification motion, Wilmington
13 Trust will not be pursuing its objections, and we have no
14 objection to the introduction of the exhibits. However, we do
15 reserve our rights, in the event the evidentiary record is
16 going to be used in any other proceeding, including a 363 sale
17 motion, in the event the plan modification is not approved.

18 THE COURT: Okay, you can raise that at that point.

19 MR. FOX: Thank you.

20 MR. ROSENBERG: I assume that goes for the committee,
21 as well, Your Honor --

22 THE COURT: Yes.

23 MR. ROSENBERG: -- we can reserve it. Okay.

24 THE COURT: That's fine. All right, I'll admit those
25 documents into evidence, then --

1 MR. BUTLER: Thank you.

2 THE COURT: -- subject to all the caveats and
3 reservations that have just been outlined on the record.
4 (634 Various Joint Exhibit Documents were hereby received into
5 evidence, as of this date.)

6 MR. BUTLER: Thank you, Your Honor.

7 THE COURT: Given the number of these documents,
8 rather than having me wrestle with them, which is what I've
9 done when there have been fewer binders, I'm going to ask you
10 all to give me copies of the witness book when you have a
11 witness. That will make things go faster, too, I think.

12 MR. BUTLER: Okay.

13 MS. MEHLSACK: Your Honor, if I may. Barbara Mehlsack
14 for the operating engineers and the IBW and UIM. We had filed
15 an amended objection --

16 THE COURT: I read that.

17 MS. MEHLSACK: -- last night, and we just wanted
18 assurance that that was going to be included in the record, as
19 well.

20 THE COURT: It's on the docket and I've reviewed it,
21 so yes.

22 MS. MEHLSACK: Okay, thank you, Your Honor.

23 THE COURT: Yes.

24 MR. BUTLER: Can I have just one moment, Your Honor?

25 THE COURT: Sure.

1 MR. BUTLER: Your Honor, I'd like now, if I could, to
2 proceed to the witness declarations. One of my colleagues will
3 pass up the declarations to you --

4 THE COURT: Okay.

5 MR. BUTLER: -- as we go through them along with the
6 appropriate exhibits. We're going to start, Your Honor, if we
7 could, by offering Mr. Sheehan.

8 THE COURT: Okay.

9 MR. BUTLER: And we'd offer Mr. Sheehan with respect
10 to -- just get my -- we'd offer Mr. Sheehan with respect to
11 three declarations that have been filed that are Joint Trial
12 Exhibits 48, 49, and also Trial Exhibit 48-A dealing with the
13 plan modifications, the auction process, and due diligence
14 efforts. Two of those declarations were prepared on July 19th.
15 The declaration dealing with the auction process and related
16 business decisions was dated July 28, 2009. Mr. Sheehan's
17 declarations have been designated by the parties as highly
18 confidential, and they've been provided to the Court on that
19 basis. And I would offer Mr. Sheehan for cross-examination by
20 any party as part -- and I think, just, I'll start this just
21 try and make it simpler because I can hear more reservations
22 coming. I'm going to offer him in this morning's sessions for
23 cross-examination in connection with the debtors' request that
24 Your Honor approve the plan modification motion. If we go into
25 the second phase of this proceeding, and I seek alternative

1 relief under the 363 sale, it's my intention to come back and
2 offer them again for purposes of those declarations being
3 considered in that context, and give any party who wants to
4 cross-examine them in that context for that relief, the
5 opportunity to do so, if that's acceptable to the Court.

6 THE COURT: That's fine.

7 MR. BUTLER: All right, so with that statement, then,
8 I'd offer Mr. Sheehan and his declarations, again, Joint
9 Exhibits 48, 48-A, and 49 for cross-examination by any party or
10 any questions the Court might have.

11 THE COURT: Okay, does anyone want to cross-
12 examination Mr. Sheehan on his three declarations? Okay,
13 hearing no one, I don't have any questions, having reviewed
14 those declarations.

15 MR. BUTLER: Thank you, Your Honor. Your Honor, I
16 would next like to present Mr. Keith D. Stipp to be cross-
17 examined with respect to his declaration which is Joint Exhibit
18 50, cross-examination by any party or any question that the
19 Court may have.

20 THE COURT: Does anyone want to cross-examine
21 Mr. Stipp? I guess the only question I had, and not
22 necessarily of Mr. Stipp. It could be of you or another party,
23 is it appears to me the -- I wanted to nail down the likelihood
24 of obtaining the emergence capital which he briefly addresses
25 in his declaration. You can address it, he could address it

1 based on his knowledge.

2 MR. BUTLER: Your Honor, with respect to the emergence
3 capital that is being dealt with here, there is emergence
4 capital coming in a couple of different ways, and I'm not sure
5 which one you want. Let me just briefly address each of them.
6 Mr. Sheehan's supplemental declaration, Exhibit 48-A, talks in
7 detail about the capitalization of, what I'm going to call for
8 this hearing, New Delphi, which is that entity that is going to
9 have the assets, substantially all the operating assets that
10 are not either being divested by Old Delphi under DPH Holdings
11 Company or having not been sold to General Motors through its
12 subsidiary. And Mr. Sheehan has outlined the transactions that
13 have been agreed to by General Motors and by a number of DIP
14 lenders to capitalize that company, and that's described in
15 detail in Mr. Sheehan's declaration. And when I get into the
16 argument, I'll go through it in some detail. But the reality
17 is, though, and I think that Mr. Bernstein -- and let me just
18 address a bit of protocol, here.

19 This is the administrative agent's pure credit bid
20 that we'll be talking about a lot today, and so I will, because
21 under the protocol, it is the agent that acts, I will be
22 addressing Mr. Bernstein as the administrative agent.
23 Mr. Bernstein will be quick to remind me that in this
24 particular instance, the administrative agent acts pursuant to
25 directions that it has received from the required lenders under

1 the credit agreement that it has determined in its own judgment
2 to be valid directions that directs it to behave in a certain
3 way or conduct itself in a certain way on behalf of the
4 lenders. And therefore, I fully expect, when I direct certain
5 statements to Mr. Bernstein or I attribute certain things to
6 Mr. Bernstein, that he will, in fact, designate someone on
7 behalf of the, what I would call the principal DIP lenders,
8 those folks who have been the driving forces behind this
9 consensual transaction and who own a very significant part of
10 the DIP facility to speak on their behalf. And as Your Honor's
11 aware, those firms are represented, either the Tranche C
12 collective and that group of firms represented by Willkie Farr,
13 and Mr. Abrams is here in court with his colleagues to address
14 that, and its funds, and there are various funds that are
15 involved, are represented by Dechert, and Mr. Siegel's here in
16 court with respect to those individuals.

17 So as we go through this, even from the debtors'
18 perspective, this is a pure credit bid and I deal with the
19 administrative agent. The fact is, the administrative agent
20 deals with the required lenders. The required lenders are
21 essentially represented by the entities that Mr. Siegel and
22 Mr. Abrams represent. And so as we go through that process, I
23 should just place that on the record because there will be,
24 from time to time, there will be comments that will be made and
25 Your Honor should understand some basis of why we're dealing

1 with this.

2 And in that regard, with respect to the capital
3 commitments I've just discussed, those are outlined in
4 Mr. Sheehan's supplemental declaration in Joint Exhibit 48-A.
5 Attached to Exhibit 48-A is the highly confidential transcript
6 of the auction proceedings that were held over some eighteen
7 hours on this past Sunday and Monday at our law firm which over
8 a hundred people participated starting at 1 o'clock in the
9 afternoon on Sunday and concluding at 7 o'clock in the evening
10 on Monday.

11 And during the course of those proceedings, there was
12 an occasion -- after the pure credit bid was submitted, there
13 was an occasion for the parties to overnight review the pure
14 credit bid, Sunday evening, Monday morning, and there was an
15 extended session on the record in which I asked, on behalf of
16 the debtors, a series of questions to the administrative agent
17 addressing a number of issues. One of the issues was the issue
18 Your Honor talked about, capitalization. Mr. Bernstein and the
19 administrative agent designated Mr. Lefkort, who is one of
20 Mr. Abrams' colleagues, to address those issues, and that is
21 both transcribed in the auction record and is discussed in
22 Mr. Sheehan's affidavit.

23 The second piece of capitalization is the
24 capitalization for DPH Holdings. DPH Holdings capitalization
25 comes from a number of transactions under the proposed MDA.

1 Those would include some funding that comes from the parties
2 including principally from General Motors through a subsidiary
3 -- and when I say General Motors, here, or General Motors
4 Company, I'm talking about new GM to which this transaction has
5 been assigned in Judge Gerber's courtroom, and I am speaking as
6 -- generally, when I say General Motor's, just for the benefit
7 of the GM parties in the room, I'm meaning the particular
8 affiliate or subsidiary or designee under the documents. I'm
9 not going to try to go up through the precise designations,
10 here. But generally, under the MDA, there's funding that
11 occurs from the parties to DPH Holdings. So there's
12 capitalization in that way, there's capitalization in the way
13 that there are retained assets as well as retained liabilities
14 in DPH Holdings, including non-core --

15 THE COURT: You don't need to go through that.

16 MR. BUTLER: Okay.

17 THE COURT: My real concern was, where money is coming
18 from third parties, either DIP lenders or GM, the state of its
19 commitment.

20 MR. BUTLER: Right.

21 THE COURT: I know there is second tier level funding
22 that the DIP lenders are going to seek, but in terms of the
23 actual funding --

24 MR. BUTLER: Right.

25 THE COURT: -- the level of the commitment.

1 MR. BUTLER: Right. Let me state it and then
2 Mr. Bernstein can designate Mr. Abrams to respond or
3 Mr. Siegel. But as it's been represented to the debtors, and
4 the base on which our board of directors exercises business
5 judgment, the commitments associated with all of the GM-related
6 funding are hard and firm, based on the terms of the
7 agreements, and the financing that is being taken on by those
8 parties that are financing the what I'll call New Delphi, those
9 financing transactions have been signed up to and committed to
10 on an initial basis by, essentially, Silver Point and Elliott,
11 and they have -- and I'll talk more about this later, but they
12 have, or they're providing an opportunity for other DIP lenders
13 to participate.

14 THE COURT: Right.

15 MR. BUTLER: But one of GM's requirements, and
16 eventually, Delphi was comforted by this, whatever backstop
17 there may be, these commitments, whatever rights offering, if
18 you will, or syndication, if you will, depending on how you
19 want to think about it of these transactions to other DIP
20 lenders to give them the opportunity to participate, the
21 obligations remain hard with the Silver Point and Elliott-
22 related entities. I think Mr. Siegel and Mr. Abrams can
23 confirm that on the record.

24 MR. BERNSTEIN: Your Honor, I'm going to -- Allen
25 Bernstein, for the administrative agent. I am going to pass

1 the baton both to Mr. Abrams and Mr. Siegel.

2 THE COURT: Okay.

3 MR. SIEGEL: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MR. SIEGEL: I can confirm that what Mr. Butler said
6 is, in fact, the case, that the Elliott funds have backstopped
7 the financing commitment that have put their own balance sheet
8 at risk, here, but they are offering it on to others.

9 MR. ABRAMS: Your Honor, Marc Abrams. The same is
10 true with respect to funds managed by Silver Point Capital.
11 Both Silver Point Cap and Elliott have committed to GM almost
12 900 million dollars in capital that would be utilized to
13 capitalize the New Delphi along with the GM contributions
14 Mr. Butler alluded to. And then, again, as Your Honor has
15 already grasped, there will be a sell-down mechanism to spread
16 that risk. But that sell-down mechanism does not impact the
17 commitment.

18 THE COURT: Okay, thank you. That was my only
19 question that was raised by the Stipp declaration.

20 MR. BUTLER: Your Honor, then, moving on, our third
21 witness in support of our plan modification motion would be
22 that of Mr. Miller. As you know, Steve Miller has been the
23 debtors' executive chairman throughout this process. His
24 declaration is Joint Exhibit number 46, and I would present him
25 for cross-examination for any party in connection with the plan

1 modification motion or any questions the Court might have.

2 THE COURT: Okay, does anyone wish to cross-examine
3 Mr. Miller on his declaration? Okay, I don't have any
4 questions of Mr. Miller, either.

5 MR. BUTLER: Thank you, Your Honor. Your Honor, the
6 fourth witness the debtors would present in support of our plan
7 modification motion is Mr. Craig G. Naylor, our lead
8 independent director on Delphi's board of directors. His
9 declaration is set forth as Joint Exhibit number 47. Again, I
10 present him for cross-examination or any questions the Court
11 might have.

12 THE COURT: Does anyone want to cross-examine
13 Mr. Naylor? Okay, again, this probably could have been of
14 Mr. Sheehan, as well, it could be of you, Mr. Butler, also.
15 One feature of this transaction is the agreement by the winning
16 bidders to make a payment to the stalking horse, Platinum. And
17 I took not only from Mr. Sheehan's supplemental declaration,
18 but from the fact that the board approved the entire
19 transaction, the board concluded that that payment didn't chill
20 the bidding but was made for valid purposes between GM and the
21 bidders on one hand and Platinum on the other. But it wasn't
22 directly addressed by Mr. Naylor's affidavit. I just want to
23 make sure that was something that was considered by the debtors
24 in seeking approval of the bid that they've identified as the
25 winning bid.

1 MR. BUTLER: Your Honor, I can confirm that that's one
2 of the factors that we took into consideration. I would also
3 say -- and I'm going to talk about this later, as well --
4 Platinum Equity has played a critical role in these Chapter 11
5 cases over the last several months, and indeed, in many ways,
6 over the last several years. And they were absolutely critical
7 to the process over the last two months, two to three months,
8 since early April of this year. And that will, I think, become
9 even -- if it's not already apparent to Your Honor from the
10 declarations, I hope to make it very apparent in my closing
11 argument. And that included in participating in this auction
12 process.

13 As Your Honor is aware, when we filed our plan
14 modification motion on June 1st, we filed it in a transaction
15 with Platinum Equity and General Motors when the debtors had
16 concluded, based on the representations then having been made
17 at that time which were relevant at that time, that the lenders
18 weren't prepared to participate in the transaction and the
19 alternative to a deal was liquidation. And we were able to
20 work out that transaction and then move forward with it, and
21 that has led to this auction process. And the earlier hearings
22 on June 10th when Your Honor approved a resolicitation and
23 other procedures for this, Your Honor, on the record, at the
24 request of the lenders and the committee and others, Your Honor
25 wanted to make very sure that our duty under the June 1st

1 agreement to consider unsolicited alternative transactions in
2 accordance with our fiduciary responsibilities had as much
3 transparency as possible so that parties close to this
4 transaction could see it up close and examine it. You asked
5 the creditors' committee to monitor that, which they did
6 faithfully throughout this process, and we administered it.
7 Under the supplemental procedures, which were Exhibit N to the
8 original order, the modification procedures order, we qualified
9 three third-party bidders that were being considered and did
10 due diligence and considered transactions. And none of those
11 bidders, as Your Honor's aware, none of those bidders, by July
12 10th, which was the deadline for the submission of proposed
13 qualified alternative transactions, submitted any proposals.
14 That was one phase of this process, and so while it didn't
15 particularly surprise the debtors in terms of the outcome in
16 connection with that because of the complexity of this process
17 and the various risk allocation, other issues that have to be
18 considered, we ran that part of the process. And a good
19 portion of, I think, what Your Honor -- at least the debtors'
20 belief of what Your Honor wanted us to do from June 10 forward,
21 was to run a transparent process that would give the parties
22 that are in this case and invest in this case an understanding
23 of whether a third-party would come in and propose a higher or
24 better alternative transaction. And they would have the
25 information upon which to do that. We ran that process, July

1 10th came, those three qualified bidders did not submit an
2 alternative.

3 At the same time we were going through this process,
4 as Your Honor is also intimately aware of, we had any number of
5 chamber conferences and discussions between the parties about
6 how a pure credit bid might be submitted. And Your Honor
7 recognized, as the debtors did, that a pure credit bid is
8 different. It's different in terms of the kinds of remedy it
9 is, it is different under 363(k), and Your Honor concluded in
10 the Court's judgment that some but not all of the supplemental
11 procedures should apply to a pure credit bid. And Your Honor
12 crafted with the parties and entered orders, supplemental
13 orders that laid forth procedures to address that pure credit
14 bid. So when we got to the auction process, we ended up in the
15 auction process in, really, as our press release and others
16 indicated, really running a process between the original June
17 1st transaction in which General Motors was a party along with
18 Platinum, and a pure credit bid, in which the lenders had taken
19 advantage of paragraph 46 of the modification procedures order
20 which had set forth the ability, specifically, for General
21 Motors to negotiate with third parties and to participate in
22 transactions with them. Relief, Your Honor, that could not, as
23 Your Honor, I think, recognized at a prior hearing involving
24 Platinum, could not have been put in place without Platinum's
25 consent. There was an arrangement put in that allowed,

1 essentially, GM to play, if you will, on both teams. And that
2 made for a difference in the dynamics for the auction process.
3 And would that Your Honor had been in our auction room over the
4 weekend where these 125 people, all told, participated at one
5 point, you would have seen that, in fact, the various tables
6 were around, the bidder tables, there was Platinum on the one
7 hand, there were the administrative agent on the other with the
8 DIP lenders behind him, and right in the middle was General
9 Motors at its own table because it, in fact, was negotiating
10 with both sides and was parties to both and actually had
11 committed to the company and committed to the Court, and
12 commits here, today -- because we've designated the Platinum
13 transaction as the alternate transaction -- that it would
14 fulfill its responsibilities under either, and the modification
15 procedures already gave it that ability. That dynamic, set up
16 by the modification procedures order, and in light of the fact
17 that there were the three third-party, if you will, sort of,
18 independent qualified bidders chose not to continue to
19 participate in the process really led from July 10th through, I
20 believe, this morning, a series of negotiations and discussions
21 which the company has encouraged that would cause the bids to
22 be presented to be the highest and best bids on both sides, but
23 also encouraged the parties to try to work together to come to
24 a consensual transaction. It really was a continuation of the
25 efforts Judge Morris had begun both quite capably in the

1 judicial mediation to try to bring these parties together. And
2 so I -- well, I can assure you that up until the minutes before
3 the auction was closed, I think Mr. Rosenberg would agree with
4 me as the monitor of the auction, there was no chilling of the
5 bidding going on between those parties, but there was -- and I
6 need to say on this record -- there was the unusual dynamic of
7 having General Motors involved in both bids, and there was the
8 desire of the debtors, and I think others, the people involved
9 in the auction of trying to have an environment where we ended
10 up at the end of the auction with the best MDA that did not
11 involve the DIP lenders, and the best pure credit bid MDA that
12 involved the DIP lenders. So we'd have those two transactions
13 to look at. I think we accomplished that. As part of those
14 discussions -- and these discussions, by the way, did not
15 include the debtors, but we knew that they were going on --
16 Platinum, General Motors, and the DIP lenders that constituted
17 the required lenders had a series of discussions, and then they
18 placed an agreement on the record -- and it is on the auction
19 record, it is attached and described; we had it transcribed --
20 it is attached to Exhibit 48-A -- set forth in detail this
21 understanding that had been reached, and we did, both with the
22 monitors of the auction, which are the creditors' committee,
23 the UAW and the IUE -- although the IUE did not participate --
24 but with the monitors that did participate, and then
25 ultimately, with the board of directors, we reviewed all of the

1 events that had transpired at the auction, including the
2 agreement by those two parties to pay 30.5 million dollars in
3 expense reimbursement and other payments to Platinum. And
4 coupled with that was an understanding that those parties would
5 continue to work with each other about Platinum's potential
6 involvement in the pure credit bid. And as I understand it,
7 those discussions have been continuing over the last several
8 days. We may have something to say about that before the
9 record, here, today, is closed. The debtors viewed that
10 statement, and we consulted with Mr. Rosenberg about this. The
11 cofiduciaries of the case viewed those payments as implicating
12 1129(a)(4) and believe that they needed to be publicly
13 disclosed and brought to Your Honor's attention, and we believe
14 they need to be approved under the Bankruptcy Code.

15 THE COURT: Even though they're coming from a third --

16 MR. BUTLER: Correct.

17 THE COURT: -- party source, or two third-party
18 sources?

19 MR. BUTLER: And the reason for that, Your Honor, is
20 because those two party sources, if Your Honor approves this
21 transaction, will actually be acquiring property of the estate.
22 And I think a literal reading of 1129(a)(4) says if you're a
23 party who's acquiring property of the estate, and you make
24 payments in connection with the consummation of the plan, those
25 fall, arguable, within the Court's purview. And therefore, we

1 wanted there to be -- and particularly in light of Your Honor's
2 prior ruling when the debtors had brought an expense
3 reimbursement motion that was contested by some of these
4 parties for an amount that was not -- that's substantially
5 similar to what was agreed to, we believe that this needed to
6 have the transparency and light of day. The debtors,
7 obviously, if we -- from a business judgment perspective, as
8 Your Honor knows, the debtors believed, under all the
9 circumstances, the prior motion was reasonable. So you can
10 understand the board of directors, when they considered this
11 and added to it the support of the DIP lenders and General
12 Motors and the lack of opposition of the monitors at the
13 auction to this transaction, although Mr. Rosenberg agreed with
14 me that this needed to come forward under 1129(a)(4), we
15 believe that it was appropriate and do believe it's
16 appropriate, and do believe Your Honor should approve it as
17 part of this transaction.

18 THE COURT: Okay. All right. I don't have any other
19 questions of Mr. Naylor.

20 MR. BUTLER: Thank you, Your Honor. Your Honor, the
21 fifth witness in support of our plan modification motion that
22 we'd like to present is William R. Shaw, the managing director
23 of Rothschild. His declaration is Joint Exhibit 51. And we're
24 presenting him for cross examination or for any questions the
25 party -- that Your Honor may have.

1 THE COURT: Okay. Does anyone want to cross examine
2 Mr. Shaw?

3 (Pause)

4 THE COURT: Okay. I don't have any questions of
5 Mr. Shaw.

6 MR. BUTLER: Thank you, Your Honor. Your Honor, our
7 sixth witness is Randall S. Eisenberg, who is a senior managing
8 director of FTI Consulting. His declaration is at Exhibit 52.
9 I do want to point out, Your Honor, that this testimony, as we
10 have indicated in our plan modification order, is intended to
11 be introduced in connection with Your Honor's findings with
12 respect to the best interest test under Section 1129, and not
13 for other purposes. And the findings we've asked you to make
14 in your order are limited to that purpose as it relates to
15 certain of the declarations -- certain aspects of
16 Mr. Eisenberg's declaration.

17 With that statement, Your Honor, I would offer
18 Mr. Eisenberg for cross examination or for any questions the
19 Court might have.

20 THE COURT: Okay. Does anyone want to question
21 Mr. Eisenberg?

22 (Pause)

23 THE COURT: All right. I have no question of him
24 either.

25 MR. BUTLER: Your Honor, I'd like to move to voting,

1 then, and the voting declarations and address voting issues at
2 this time.

3 We start with the declaration of Evan Gershbein.
4 There are three declarations. They are at Joint Exhibits 39,
5 40 and 41. Mr. Gershbein is the senior managing consultant of
6 Kurtzman Carson Consultants LLC. And --

7 THE COURT: You don't need to give me those. You
8 don't need to give me those.

9 MR. BUTLER: Okay. And I also, at the same time,
10 would present the declaration of Jane Sullivan, which is Joint
11 Exhibit number 42. Ms. Sullivan is the executive director of
12 Financial Balloting Group LLC. In connection with presenting
13 those declarations, Your Honor, I would call your attention to
14 Exhibit C to the declaration of Ms. Sullivan, which is also
15 contained in the demonstratives.

16 If I may, Your Honor, I have a couple of the
17 demonstrative books I could pass up, if I may --

18 THE COURT: Okay.

19 MR. BUTLER: -- for easier reference. And Joint
20 Exhibit 53 has in it, which is -- and it's Chart 43 is the
21 proper reference, for the record -- shows the voting summary by
22 class. And for purposes of today's hearing, there are five
23 classes that were impaired that voted in favor of the plan.
24 The balance of the classes voted against the plan.

25 And the parties that voted in favor of the plan, in

1 addition to three tax collectors -- in fact it was the same tax
2 collector with secured claims voting in three different
3 classes -- there was also classes of 1C-2 through 12C-2,
4 involving the PBGC claims. The PBGC is by far the largest
5 prepetition creditor of these cases. And they voted in favor.
6 And General Motors voted all of its claim in favor as well, at
7 1D to 12D.

8 I'm going to address a matter with the creditors'
9 committee in just a moment, but before I do that, Your Honor,
10 I'd like to get this evidence into the record. And so I
11 present both Mr. Gershbein and Ms. Sullivan for cross
12 examination by any party or for any questions the Court might
13 have.

14 THE COURT: Okay. Does anyone want to cross examine
15 Mr. Gershbein on his voting declaration? All right. Does
16 anyone wish to cross examine Ms. Sullivan on her voting
17 declaration? All right. I don't have any questions of them,
18 either.

19 MR. BUTLER: Thank you. Your Honor, let me again
20 refer to Joint Exhibit 53, Chart 43, which is this large chart
21 that's in the demonstrative. And obviously, one of the groups
22 of creditors that voted against this was class 1C-1, the Delphi
23 DAS debtors. And while there are other classes that voted
24 against it, that is the class that had the most voting going
25 on, the most ballots cast, in connection with this. And

1 Mr. Gershbein and Ms. Sullivan summarized those. This
2 particular exhibit has only the percentages, but there were a
3 large number that voted against the plan.

4 I believe that there was a direct correlation to that
5 vote with the then recommendation of the creditors' committee,
6 which, as Your Honor knows, under the consideration that had
7 then been allocated to them, the creditors' committee
8 determined, in their good-faith deliberations, that they could
9 not recommend, notwithstanding what their assessment of where
10 they fall in the absolutely priority waterfall, they could not
11 recommend that the modifications be approved.

12 That has led to what I was confident would be --
13 hopeful that that was going to be the case, which was further
14 negotiations among the stakeholders. There was, as we've
15 reported, and I indicated now -- there were resolutions of
16 objections reached, both with the creditors' committee and
17 Wilmington Trust to resolve the objections by the creditors'
18 committee, at docket 17034 and at 18291; and with Wilmington
19 Trust at dockets 17169, 18313 and 18471.

20 And that has -- with respect to the potential
21 distribution to holders of general unsecured claims and the
22 PBGC general unsecured claims under what I'll call the
23 waterfall schedule and the master disposition agreement, there
24 was an increase in the maximum from 180 million to 300 million.
25 And there was an agreement that starting at distributions in

1 excess of 7.2 billion, there would be for every -- I gather the
2 way I'm supposed to say this now is, for every sixty-seven and
3 a half cents of distributions under the waterfall, thirty-two
4 and a half cents would also be distributed to the holders of
5 those claims, which are -- and to emphasize them, those are
6 unsubordinated general unsecured claims.

7 Based on those negotiations, I think, based frankly on
8 the creditors' committee's role as a monitor of these
9 transactions since June 10th and their participation in the
10 assessment of all the due diligence activities that went on,
11 the conduct of the parties, their involvement in overseeing the
12 auction, all the things that weighed into this, I believe that
13 the conclusion of the creditors' committee now, is that in fact
14 they believe the plan modification motion -- and Wilmington
15 Trust as indenture trustee, believes the plan modification
16 motion should be approved and that I believe Mr. Rosenberg is
17 going to stand and confirm that he believes and the committee
18 believes that that approval -- it would be appropriate for the
19 Court to invoke the cram-down provisions of 1129(b) to
20 accomplish that result, as it relates to the class that they
21 represent.

22 THE COURT: Okay. Mr. Rosenberg, do you want to state
23 your views?

24 MR. ROSENBERG: Your Honor, obviously, this is a
25 rather unusual situation where the creditors' committee urged a

1 negative vote. The negative vote was overwhelmingly obtained.
2 But significant substantial increases in consideration were
3 subsequently negotiated, such that the creditors' committee now
4 feels that the result meets the lowest bounds of
5 reasonableness, I suppose is the best way to put it.

6 So it is an unusual situation where the committee has
7 withdrawn its objection to the plan amendment motion, not, I
8 would add, to the 363, if we get to that. Because the
9 creditors' committee feels that the renegotiated consideration
10 is, as I suggest, within the lowest bounds of reasonableness.

11 So it is unusual, but -- and it obviously would have
12 been far better to have negotiated a result for a vote that the
13 creditors' committee could have recommended. That didn't
14 happen. But standing here today, we do withdraw our opposition
15 to the amended plan.

16 THE COURT: Okay. Thank you.

17 MR. BUTLER: Your Honor, I believe that Mr. Fox will
18 stand to confirm that Wilmington Trust, being one of the
19 principal members of the committee, and having participated in
20 virtually all the same aspects of this proceeding that Mr.
21 Rosenberg did, similarly has agreed to withdraw their
22 objections and support requested of the modified plan. There
23 is a mechanism that would call for a capped amount of their
24 fees and expenses to be paid. It's -- that cap, actually, in
25 some respects is lower than the cap under the prior

1 confirmation order. But that that cap amount be paid to them
2 invoking the reasonableness review that is set forth in the
3 prior confirmation order.

4 THE COURT: Okay.

5 MR. FOX: Edward Fox from K&L Gates for Wilmington
6 Trust, Your Honor. Mr. Butler is correct. I'd just join in
7 the comments that Mr. Rosenberg made with respect to the stance
8 that we're in. But we believe at this time it is appropriate
9 to withdraw the objection, with respect to the plan
10 modification, not with respect the separate 363.

11 THE COURT: Right.

12 MR. BUTLER: Your Honor, let me just comment on the
13 current status of the modified plan and of the proposed plan
14 modification order. The plan itself was first filed on June
15 1st -- excuse me -- filed on June 1st, that's correct. But the
16 plan, after it had been reviewed by Your Honor at the June 10th
17 hearing, the plan that Your Honor ordered resolicitation of
18 certain classes on to check their -- to resolicit acceptances
19 or rejections of the plan modifications, that was filed
20 publically at docket number 17030 and is Joint Exhibit 1 to
21 this record.

22 The debtors then made further modifications to the
23 plan in connection with negotiations with its stakeholders. It
24 included those modifications in an appendix to its omnibus
25 reply to objections that were filed. It was filed on July 27th

1 at docket number 18659. And those modifications are Joint
2 Trial Exhibit 632.

3 There have been further negotiations that have
4 occurred with respect to the modified plan. And that black
5 line is set forth in Joint Exhibit 8. And Joint Exhibit 8 is
6 the current form of the modified plan. Prior to closing this
7 record, I'll want to consult with the principal parties to make
8 sure that there's nothing else to go in with respect to that.
9 But the current state of the modifications is Joint Trial
10 Exhibit 8.

11 With respect to the proposed form of plan modification
12 order, the order as originally proposed by the debtors after
13 consultation, but not acceptance -- but consultation with many
14 of its stakeholders, was also filed as an exhibit or an
15 appendix to our omnibus reply on July 27th. Again, at docket
16 number 18659. And it's also been marked Joint Trial Exhibit
17 632.

18 Since that time, over the last couple of days, we have
19 made further progress on obtaining a consensual form of order.
20 The state of that progress as of midnight last night is set
21 forth in Joint Trial Exhibit 11. And there's a black-line at
22 Joint Trial Exhibit 9.

23 THE COURT: And that's the one dated July 28th?

24 MR. BUTLER: Correct.

25 THE COURT: Okay.

1 MR. BUTLER: And that one -- that actually represents
2 the state of the order as of midnight, getting ready for
3 today's hearing.

4 Your Honor, I'm not going to address those matters in
5 this morning's session any further. There are continued
6 discussions that are going on between the parties into the form
7 of those, and we will address those in the afternoon session,
8 as it relates to those matters. But that's the current -- I
9 just wanted to make sure we had the current state of those
10 documents on the record.

11 THE COURT: Okay. And the plan is -- the modification
12 is the one dated July 28th also, right?

13 MR. BUTLER: Correct.

14 THE COURT: Okay.

15 MR. BUTLER: Your Honor, what I'd like to do now is
16 move to an overview of objections, and make some statements
17 about those objections, and find out if we can let some of
18 these folks go home, if they want to, unless they want to stay
19 to the end of the day or whenever this record is completed.

20 We have, Your Honor, filed a summary of the objections
21 by nature of objection. Those are listed at Appendix B to our
22 reply at that same document filed at docket number 18659, and
23 at Joint Exhibit 32, which listed by category the objections as
24 the debtors understood them, after having reviewed all of the
25 objections.

1 And we also filed as a joint trial exhibit, the
2 objection-by-objection summary which is quite long, because
3 there were a lot of objections that were filed to the plan.
4 And those are set forth at Joint Trial Exhibits 215 and 216.
5 There were, in total, some 1,900-plus objections filed to the
6 plan, because we construed each of the letter objections
7 written either by severance parties or by pensioners, who wrote
8 Your Honor and complained about various elements of actions
9 that have occurred in this case -- any of those letters that
10 were filed subsequent to the -- that were docketed subsequent
11 to the 10th of June, we have deemed to be an objection to this
12 hearing.

13 It's the debtors' position, based on interpreting Your
14 Honor's order, that any of the letter objections that were
15 filed prior to June 10th, were subsumed within Your Honor's
16 order of June 16th, relating back to June 10th, which overruled
17 all objections as it related to those at that time. So there
18 are some 1,900-plus objections.

19 First let me deal with contract-specific objections.
20 There were sixty-four objectors that filed a total of ninety-
21 two contract-related objections, regarding the assumption and
22 assignment, notices of nonassumption and assignment, cure
23 notices and related matters, that were, after consultation with
24 Your Honor previously, adjourned summarily to the August -- to
25 a hearing at 10 a.m. on Monday, August 17, 2009, and Your

1 Honor's findings in today's hearing with respect to those
2 objections -- or with the contracts that those objections
3 relate to, will be subject to those objections; and Your
4 Honor's resolution of those objections, if they're not
5 consensually resolved, on August 17th.

6 And therefore, we're not proceeding on any of those
7 objections today.

8 THE COURT: And you've provided notice to all of those
9 parties of that?

10 MR. BUTLER: We did, Your Honor. We provided notice
11 in a number of different ways, including having people call
12 them up -- people on the telephone and send e-mails. We
13 filed -- and our notice of when the auction results were
14 completed, we were required to send out another notice relating
15 to the fact that there's a new company buyer under the proposed
16 transaction. We had to send notice out to everybody. As Your
17 Honor recalls, from your prior procedures, that gives these
18 parties the right to file a supplemental objection, but only as
19 to the new company buyer, not as to cure other matters for
20 which objection deadline -- and in that notice, we told
21 everybody it was August 17th.

22 THE COURT: Okay.

23 MR. BUTLER: We sent e-mails it was on August 17th.
24 We've actually negotiated with a lot of people and said you
25 don't need to come today. Some of those people are still here

1 because I think they wanted to hear me say what I'm saying on
2 the record.

3 THE COURT: Okay.

4 MR. BUTLER: So I'm saying on the record now at the
5 front end of the hearing so that they can take comfort that
6 their objections will be considered by Your Honor if they are
7 not otherwise resolved, on August 17th.

8 Your Honor, I also --

9 THE COURT: Well, before you move on to the next
10 category. I guess, if anyone is present who falls into that
11 category feels they need to say something now, as opposed to on
12 August 17th, this is the time to do it.

13 MR. MEARS: Your Honor, I'm not planning to say
14 anything else. This is Patrick Mears on behalf of Autocam
15 Corporation. But we have had a number of discussions with
16 Mr. Butler and his colleagues, which I thank Mr. Butler for
17 arranging.

18 There are a number of contractual issues involved
19 here, just to briefly state, whether or not the purchase orders
20 can be considered separately from the long-term contracts, and
21 if they are, are they to be treated as post-petition contracts
22 not subject to Section 363, and also the adequate assurance of
23 future performance issues.

24 There are two contracts of ours that have been sought
25 to be assumed and assigned. We understand that maybe more will

1 be coming, so that's a concern of ours as well. We just want
2 to make sure of the following: that all other Section 365
3 objections, and if applicable, state law objections, to
4 assignment are preserved. And I think they are, based on what
5 I heard Mr. Butler say.

6 Secondly, if assignment notices are sent in the
7 future, we would have, obviously, the right to object to those.
8 There's some language that --

9 THE COURT: You mean with regard to a new cont -- a
10 different contract?

11 MR. MEARS: A different contract. There's some
12 language in the order that if you read it one way it creates an
13 ambiguity, at least as I saw it. And we would be able to
14 object on all the panoply of grounds that may be applicable.
15 And that if some or all of the remaining purchase orders are
16 sought to be assigned by Autocam as severable contracts, post-
17 petition contracts not subject to 365(f), then we would have
18 the right to object to those assignments in whatever court
19 would be entitled to hear it. It could be this Court; it could
20 be some other Court. And those issues would really involve,
21 most likely, nonseverability and adequate assurance of future
22 performance. The severability, just briefly, relates to post-
23 petition purchase orders that relate to pre-petition contracts.
24 And there may be some reason that the debtor wants to sever
25 them.

1 So in light of all that, we have no problem with
2 adjourning the hearings to the 17th. You've already done it,
3 but I did want to say that on the record.

4 THE COURT: Okay.

5 MR. MEARS: With respect to the sale order, there are
6 some problematic provisions in them. We've discussed that with
7 Mr. Butler's colleagues, but right now we understand that
8 that's not before the Court. This is kind of a two-step
9 process.

10 THE COURT: That's right.

11 MR. MEARS: Thank you.

12 THE COURT: Thank you.

13 MR. BUTLER: Your Honor, Mr. Mears and I have known
14 each other for many, many, many years, and I understand the
15 reservation of rights he's put on the record. Obviously, the
16 debtors and other parties reserve their rights to the various
17 positions he might make. I don't think we need to debate them
18 today, and we'll deal with them on August 17th.

19 THE COURT: Okay.

20 MR. POWLEN: Your Honor, you're getting a bit of a tag
21 team. David Powlen, also from Barnes & Thornburg. And
22 Mr. Mears spoke to Autocam. The firm has also appeared and
23 filed objections on behalf of five other parties related to the
24 assumption and assignment of their contracts. And Mr. Butler
25 and I also had a chance to visit, prior to the commencement of

1 this hearing, with respect to paragraph 35 on page 66 of the
2 proposed order.

3 THE COURT: This is the sale order or the plan
4 modification order?

5 MR. POWLEN: This is the sale order, Your Honor.

6 THE COURT: All right. But that's -- okay.

7 MR. POWLEN: And it --

8 THE COURT: I don't want to -- we don't need to get
9 into that one.

10 MR. POWLEN: I understand, but we've confirmed and
11 he's willing to agree on the record that nothing in paragraph
12 35 is intended to impact in any way on the parties' objections
13 with respect to the assumption and assignment of contracts.

14 THE COURT: Okay.

15 MR. BUTLER: I'll just say, Your Honor, I don't
16 believe -- based on how we have taken Your Honor's guidance
17 about this hearing, I don't think we could adjourn the
18 assumption and assignment objections to August 17th and then
19 prejudice those objections by either of the two orders that
20 might be entered today.

21 THE COURT: Okay.

22 MR. BUTLER: Thank you.

23 MR. VIST: Good morning, Judge. Gary Vist on behalf
24 of American Aikoku. We have filed three objections. Two of
25 them are objections to notices of assumption and

1 nonassumption that we got in the past couple of weeks. I
2 understand those will be adjourned.

3 The third objection that we filed is actually an
4 objection to the plan itself. And the gist of the objection is
5 that the plan allows the debtor to violate the stipulation that
6 we have entered into about a year and a half ago. And I would
7 like some guidance as to whether that objection will be heard
8 today or whether it will be postponed as well.

9 THE COURT: I think it would be heard today.

10 MR. VIST: Thank you, Judge.

11 THE COURT: Okay. All right. Well, is there anyone
12 else? No. All right. Anyone on the phone, or the gentleman
13 from Barnes & Thornburg or anyone else who's here just on a
14 contract issue, you can be excused. And that would go for any
15 witness that doesn't want to stay around too.

16 MR. BUTLER: Your Honor, I also would like to address
17 the letter objections that were dealing with some -- there were
18 some 600 plus severance related letter objections filed with
19 respect to the modified plan. And the concern expressed by
20 those parties was that they might not receive all of the
21 installment severance that they were entitled to.

22 Just by way of reference, Your Honor, back in 2005
23 when these cases were filed, Your Honor entered a first-day
24 order that allowed us -- that authorized us but did not direct
25 us to be able to continue our human capital policies, but it

1 was clear in that order that we couldn't -- by continuing them
2 we couldn't create any administrative claims in the case,
3 necessarily.

4 There is, however, as Your Honor knows, a Second
5 Circuit precedent here as to parties severed in a -- persons
6 severed in a Chapter 11 case. Absent any other determination
7 that might be case-specific, the Second Circuit's given pretty
8 specific guidance that those are administrative claims, that --
9 there are some exceptions to it, I believe, but there has
10 been -- and I think, frankly, in recent years, a number of
11 courts have been seeking to interpret the guidance from the
12 Second Circuit as to how it applies in today's world. But
13 nonetheless --

14 THE COURT: It's an issue.

15 MR. BUTLER: -- that's been hanging out there.

16 THE COURT: Okay.

17 MR. BUTLER: The parties had -- the principal parties
18 to this transaction had negotiated with each other and have
19 agreed that those objections need not be considered by Your
20 Honor because the terms of this transaction, if you approve it,
21 will provide the wherewithal for those obligations to be
22 continued to be paid because the new Delphi would essentially
23 assume the payment of those obligations. But there would be an
24 option -- and that would be over time, over installment basis
25 time -- but there's also going to be an option for parties to

1 receive seventy-five percent of the remaining severance
2 obligations in a lump sum now, prior to the effective date of a
3 modified plan.

4 And so parties that want the full pay-out and want to
5 assume the risks of a full pay-out, because as we've all
6 learned in this case and in other cases, the future is never
7 assured in any transaction. And if people want to have the
8 comfort now, the parties have agreed to make capital available
9 to pay out seventy-five percent of any future payment stream on
10 a lump sum basis. And that agreement and the agreement to
11 otherwise assume these liabilities, I think eliminates any
12 potential objection by those 600 objectors.

13 THE COURT: All right. Let me just address the early
14 payment option. That would then be a provision of the MDA that
15 would go into effect prior to the effective date of the plan?

16 MR. BUTLER: Right. Yes, Your Honor. We
17 essentially -- and another way of thinking about it is we
18 actually have -- I don't know if it's necessarily the MDA
19 they're going to effect prior to the plan, but I think I'm
20 saying this correctly and I will get help I know, today, if I
21 say things incorrectly. But I believe the way in which that
22 particular matter will be implemented is that the debtors would
23 essentially --

24 THE COURT: It wouldn't violate the MDA --

25 MR. BUTLER: Right.

1 THE COURT: -- for them to make that type of payment.

2 MR. BUTLER: Correct. The debtors will make those
3 payments prior to the effective date. Our source of capital
4 for that will be the bridge financing that are being provided
5 by the DIP lenders under the DIP credit agreement through the
6 use of cash collateral accounts and by General Motors under the
7 GM arrangement. Both of those would -- if Your Honor approved
8 these plan modifications, we will have three sources of funding
9 in -- the debtors, to bridge ourselves to emergence. It will
10 be use of cash collateral accounts that we previously couldn't
11 use that are for the benefit of the DIP lenders; use of the
12 remaining funding under the LSA or the GM arrangement, as it's
13 known in this Court, with General Motors; and the repatriation
14 of excess global liquidity that we would then be able to
15 repatriate and use. And there's a series of agreements that
16 have been worked out with the DIP lenders. And this would not
17 be on the MDA side; this is actually on the administrative
18 agent side in agreements that will be documented.

19 In fact, there's an exhibit, accommodation agreement
20 amendment number 19, that does that, and there's, I believe, an
21 amended and restated GM arrangement on the GM side that deals
22 with how that will all work and how that fits together. And
23 the only thing left to be done is to continue those
24 arrangements by further amendment to be coterminous with the
25 MDA. And that would happen after -- presumably promptly after

1 Your Honor entered a plan modification, if Your Honor was
2 prepared to do that.

3 So that will be the source of our liquidity. One
4 important feature of this transaction is that we will have
5 bridge liquidity to bridge us through a closing date which we
6 hope to be before the end of the third quarter of this year
7 and -- the quarter that we're currently in or we will soon be
8 in -- that we're currently in. And it will be sufficient to
9 fund the settlements, among other things, Your Honor.

10 THE COURT: Okay. Does anyone who filed one of these
11 letter objections want to be heard on them? All right. I
12 agree with the debtors that these objections, given their
13 undertakings and agreements in connection with the MDA, are
14 moot. To the extent they would not be, they're overruled. I
15 believe there's sufficient funding as well as contractual
16 commitments for these obligations to be paid.

17 MR. BUTLER: Thank you, Your Honor. All right.
18 Continuing, Your Honor, with a summary of the sort of groups of
19 objections. We obviously had objections filed in addition,
20 those filed by the creditors' committee and Wilmington Trust as
21 indenture trustee. We had comprehensive objections filed by
22 the administrative agent and two groups of DIP lenders at
23 dockets number 18283, 18296, and 18300. Several of those
24 objectors have filed supplemental statements in the last
25 twenty-four hours, and essentially, I think the best way to

1 summarize those is, assuming Your Honor enters the plan
2 modification order that approves the debtor's recommendation
3 accepting the pure credit bid on terms that are mutually
4 acceptable to the parties, including to those parties, they
5 will not pursue these objections, which I think is probably a
6 foregone conclusion to everyone, but I still need to check that
7 box and move on.

8 THE COURT: Okay.

9 MR. BUTLER: Now, if you look at the rest of the
10 objections, Your Honor, and we're focused on the objections
11 we've classified in various areas now. I'll come back to them.
12 First I'd just like to summarize them and I'll come back to
13 individual objections.

14 In addition to the contract related objections,
15 there's nine other basic groups of objections, and this is
16 filing the groupings that we put in Joint Exhibits 215 and 216
17 and attached to our reply which is Joint Exhibit 632. And
18 they're as follows. There is some objections to the exercise
19 of business judgment by the debtors -- objecting to our
20 business judgment. Mr. Kennedy in the IUE, for example, has
21 raised that objection in his objection. So have a number of
22 the letter objectors. And so I'm going to come back to that in
23 a few minutes.

24 The second broad category of objections are objections
25 by current and former employees, including the unions, and many

1 of those are pension related objections. In fact, there are
2 well over 1,000 letter objections that are from pensioners that
3 object to what the debtors have done to date and what we are
4 proposing to do in connection with pension related matters.
5 And I'm going to come back to that because that, I think, is an
6 area of focus in this hearing.

7 The next category are government agency objections.
8 There were many agencies we had to work through, both federal
9 and state, in connection with preparing for this plan
10 modification hearing. But the only surviving objection is that
11 of the Michigan's Workers' Compensation Agency at docket number
12 18264. And while I'll address that down the line, my
13 understanding, as I've been advised, is that the state of
14 Michigan is going to rely on their pleadings that they filed on
15 their objection and are not going to present argument today.
16 Counsel's here and if I said it wrong they should tell me, but
17 I believe that's what I've been advised. So we'll have to deal
18 with -- in category three we'll have to deal with Michigan
19 Workers' Comp.

20 In connection with the fourth category, which are
21 taxing authorities -- we had a lot of taxing authorities to
22 talk about in a lot of places. We have resolved, I believe,
23 the objection -- there are only two remaining objections, one
24 of Howard County, Indiana at docket number 18218, which I
25 believe we have resolved, and one of the Texas taxing

1 authorities which is at docket number 18194, which I think at
2 the moment may not be resolved, but I have to sort that out in
3 a few minutes with some of our colleagues.

4 THE COURT: Okay.

5 (Pause)

6 MR. BUTLER: I'm advised, Your Honor, that Howard
7 County may want to address the Court on a limited aspect of its
8 objection, so we may have two of those objections to deal with
9 under taxing authorities.

10 With respect to areas that have been settled, there
11 are no remaining objections on four broad areas that would, I
12 think, otherwise have been contentious by parties. There are
13 no longer any objections outstanding to release and discharge
14 obligations and mechanics under the plan. There are no
15 outstanding objections to classification, impairment, or voting
16 issues, which is category 6. There's no objections remaining
17 to the substantive consolidation mechanics of the plan. And
18 there are no longer any objections to the 1129(a)(9) mechanics
19 and operation of that under the plan.

20 There are some miscellaneous objections -- that's
21 category 9 -- which we'll have to come back and deal with. And
22 perhaps the most -- while we think it can be rather easily
23 dealt with by the Court, on the face of the papers the most
24 consequential of that is an objection filed by James Sumpter,
25 who filed both -- who actually filed it in the form of a COBRA

1 motion at docket number 18366. And we filed an opposition at
2 docket number 16457. But it's actually -- it's been construed
3 for these purposes as an objection to the plan.

4 So Your Honor, when we look at the various categories
5 of objections, there are a few individual objectors, you know,
6 an objector in governmental agency objections, two objectors in
7 taxing authorities, some miscellaneous objections dealing with
8 the COBRA matter. And then there is, I guess, under
9 miscellaneous objections, I would add -- because I don't know
10 that it has been resolved yet -- is we do have a series of
11 objections filed by our former plan investors. And I need, on
12 a break, to see where those discussions are before I address
13 the Court on those.

14 Our approach, Your Honor, would be to take those
15 objections -- I'd like, Your Honor, to ask for a brief recess
16 to consult with some of the parties, principal parties in this
17 case about where we are on some of these objections, and then I
18 would propose to go through the categories and take them
19 category by category and go through, if it's all right with
20 Your Honor, and litigate the objections and deal with them.

21 THE COURT: Okay.

22 MR. BUTLER: And then after we get through all those
23 objections, and at least get them on the record, Your Honor may
24 want to obviously -- you know, if we could just get argument on
25 the record at least from both sides. We're going to want to

1 take a break and deal with any final issues relating to the
2 form of order and the form of the plan. And then I don't know
3 if the other parties do, but the debtors certainly have a
4 closing argument we want to present.

5 THE COURT: Okay. Well, I may well rule on the
6 objections seriatim, which may affect the length of closing
7 argument.

8 MR. BUTLER: Right.

9 THE COURT: So how much -- I can give you half an
10 hour. I can give you an hour. I can give you ten minutes.
11 How -- what are you looking for here to consult with some of
12 the people who may have --

13 MR. BUTLER: Can I have just a minute, Your Honor?

14 THE COURT: Sure.

15 (Pause)

16 MR. BUTLER: Your Honor, seeing as I have a track
17 record in this Court and in the board room of giving time lines
18 that people no longer have great confidence in, I will tell
19 Your Honor that I've decided, as I always have all along in
20 this case -- I've always decided that the shortest time line is
21 the best because you try to push people to it with no assurance
22 that we'll hit the mark. And so I think, Your Honor, I'd like
23 to take a fifteen minute adjournment. We'd advise --

24 THE COURT: Okay.

25 MR. BUTLER: -- chambers if we need any more time.

1 THE COURT: That's fine. Let me just -- is there
2 anyone else who thinks they have another objection that wasn't
3 summarized by category, just in case the debtors may want to
4 talk to you as well? Okay. So I'll be back at 12:15 unless
5 you notify chambers otherwise.

6 MR. BUTLER: Thank you, Your Honor.

7 THE COURT: And obviously you can leave all of your
8 materials here.

9 (Recess from 12:00 p.m. until 12:38 p.m.)

10 THE COURT: Please be seated. Okay, we're back on the
11 record in In re Delphi Corporation.

12 MR. BUTLER: Thank you, Your Honor. A couple of
13 housekeeping matters, if we could, Your Honor.

14 With Your honor's permission, the debtors would like
15 to release Ms. Sullivan and Mr. Gershbeim as witnesses?

16 THE COURT: That's fine. I said that any witnesses
17 who were not going to be testifying now are free to leave.

18 MR. BUTLER: The other witnesses we've indicated are
19 subject to recall because if this flips to a 363 we'll need
20 them back.

21 THE COURT: Okay.

22 MR. BUTLER: Okay, thank you.

23 (Pause)

24 MR. BUTLER: Your Honor, also, in connection with the
25 MDL litigation settlement that Your Honor approved at the July

1 23rd omnibus hearing, we've been asked to read a statement into
2 the record just for the abundance of caution, avoidance of
3 doubt that things we're doing here today aren't intended to
4 affect that settlement that was approved by you separately.
5 The settlement's been delinked from the plan.

6 THE COURT: I thought the settlement was approved to
7 enable what you're doing today.

8 MR. BUTLER: That's exactly right, Your Honor.

9 But I've been asked to read the following into the
10 record, and I shall as follows:

11 "With respect to the MDL plaintiffs, as the Court is
12 aware, the debtors have recently entered into modifications to
13 the MDL settlement that among other things delink the effective
14 date of the MDL settlement from substantial consummation of a
15 plan of reorganization. This Court approved the modifications
16 in an order entered last week at the July 23rd omnibus hearing.
17 and the debtors are moving to a separate approval process in
18 the United States District Court for the Eastern District of
19 Michigan.

20 The releases of the debtors and any non-debtors
21 provided in the modified plan of reorganization are not
22 intended and shall not be construed to extend to the claim
23 asserted in the MDL actions, rather the releases of those
24 claims shall be as provided for in the MDL settlement as
25 modified as previously agreed to by Your Honor, approved by

1 Your Honor."

2 And the debtors agreed to that, Your Honor.

3 THE COURT: Okay.

4 MR. BUTLER: Your Honor, what we'd like to do before
5 what we hope would be a late lunch break is we'd like to be
6 able to take three or four of the categories of objections that
7 have one or two objectors in them and address them.

8 THE COURT: All right.

9 MR. BUTLER: We're going to deal with the business
10 judgment objections and the unions and pension-related
11 objections after the lunch break.

12 THE COURT: Okay.

13 MR. BUTLER: There are some unions that have indicated
14 they may have settled, and I'm going to try and confirm that,
15 and if there are I'll announce those before the lunch break,
16 but otherwise, we'll deal with any live objections, if it's all
17 right, Your Honor, after the lunch break.

18 I'm going to go to, sort of, category three under our
19 Exhibits 215 and 216, nature of objections. Category 3 was
20 governmental agency objections. I indicated to Your Honor that
21 the only objection is the State of Michigan Workers
22 Compensation Agency and Funds Administration. The Michigan
23 agency which has filed its objection at docket number 18264.
24 I've just spoken to counsel during the break, I've spoken to
25 counsel to the agency and have confirmed with them that they

1 want to rest on the pleadings before you.

2 With respect to the debtors, Your Honor, I'd like to
3 -- I would like to make an argument on their objection at this
4 time if that's acceptable.

5 THE COURT: Okay.

6 MR. BUTLER: Your Honor, by its objection, the agency
7 objects to the modified plan and the debtors' alternative
8 request to sell substantially all of its assets free and clear
9 of liens because the debtors estimate outstanding workers'
10 compensation obligations in Michigan account to a little more
11 than 121 million dollars with yearly payments of approximately
12 twenty-four million. And the modified plan in the MDA do not
13 create in the agency's mind a sufficient commitment on behalf
14 of the purchasers to assume the workers -- the debtors'
15 workers' compensation obligations in Michigan. They make the
16 following arguments:

17 First, they argue that the modified plan violates
18 1129(a)(3) because pre-petition workers' compensation claims
19 will not be paid in full from distributions under the modified
20 plan.

21 Second, they assert that these transactions could
22 leave injured workers without a source of benefit payment since
23 approval of the modified plan would render the estate's
24 security fund insolvent.

25 Finally, they assert that the modified plan and MDA if

1 approved could result in the debtors or purchasers lacking any
2 method to comply with their workers' compensation obligations
3 in Michigan, and that that would result in a violation of 28
4 U.S.C. Section 959(b). And, therefore, also would cause us to
5 not be non-compliant with 1129 among other statutes -- parts of
6 the Bankruptcy Code because we wouldn't be complying with
7 applicable laws.

8 In essence, Your Honor, what the Michigan agency is
9 saying to the Court, to the debtors and other stakeholders,
10 that their unfulfilled claims are superior to claims of all the
11 creditors because they assert that state regulatory
12 requirements compel the debtors to honor those obligations.

13 We believe that that's not how it works in bankruptcy.
14 The priority scheme under Section 507 of the Bankruptcy Code
15 and this Court's bar date orders govern the rights and remedies
16 of all creditors, private and governmental, including as Judge
17 Lifland ruled in the Olga Coal case at 194 B.R. 741 page 746, a
18 1996 case in this district, "That a claimant's right to
19 recovery on account of workers' compensation claims arises out
20 of pre-petition injuries. And estate's contingent claim for
21 reimbursement of workers' compensation benefits unpaid by a
22 debtor is one such claim and is subject to the requirements and
23 discharge provisions of the Bankruptcy Code notwithstanding any
24 state statutes to the contrary."

25 Now, it is a fact, Your Honor, that the Michigan

1 agency never filed any proofs of claim on a timely basis, never
2 filed a motion to file an untimely claim and you have a right
3 to file a tardy claim. And, therefore, it's not to receive a
4 distribution under the modified plan as to the discharge of any
5 pre-petition liabilities.

6 I don't believe the Michigan agency is asserting that
7 they can file an untimely claim. Although, I was advised prior
8 to the commencement of this hearing that they may have filed
9 such a claim in the last several days. But I've not been able
10 to confirm it myself.

11 Just on that point, Your Honor, the Michigan Agency
12 was served, these are indisputable facts, I believe. The
13 Michigan Agency was served with the bar date notice almost
14 three years ago but did not file a claim. It hasn't sought to
15 file a late claim. It hasn't made a requisite showing of
16 excusable neglect. Other comparable agencies around the
17 country did file proofs of claims. So it's not as though
18 workers' comp agencies around the country didn't realize that
19 it needed to do so. And I don't believe that the agency can be
20 surprised by the outcome that is occurring in this case, vis-a-
21 vis the agency. And, obviously, to the extent that the claim
22 was filed in the last couple of days, the debtors will
23 vigorously oppose that attempt on the grounds, among other
24 things, that their failure to file a proof of claim was a
25 conscious and a willful decision, and was without, at minimum,

1 excusable neglect.

2 Your Honor, we have been in conversation and dialogue
3 with regulatory authorities across the country about this case,
4 including most affected workers' compensation agencies. And
5 what we shared with them and every agency had a different set
6 of facts, some filed claims, some didn't. Some had letters of
7 credit, some didn't. Some had insurance policies, some didn't.
8 Some had issues where they were substantially resolved and
9 others had issues that had to be dealt with. But we have
10 consistently addressed a common theme. That if a regulatory
11 agency for workers' comp had not filed a proof of claim before
12 the bar date that state would not be entitled to a distribution
13 under the modified plan and we would oppose any attempt to file
14 a late claim.

15 It's also I think very clear, Your Honor, especially
16 as Your Honor considers bar date orders, and this I don't think
17 we need to deal with in any detail in this hearing, but all
18 creditors, whether they're private or governmental, have to
19 abide by bar date orders, unless they forfeit distributions
20 under a plan, and I can't think of anything more compelling at
21 this point in time, then a claim that would intend to undue the
22 fabric of the compact that's been agreed to among stakeholders
23 in this case that will permit this company to complete a
24 modified plan of reorganization.

25 I also point out, Your Honor, that Michigan has

1 previously filed several proof of claims relating to taxes and
2 other matters, and Your Honor, actually adjudicated some of the
3 State of Michigan's claims in other hearings.

4 The argument the Michigan agency makes that its claims
5 are superior to the claims of all other creditors because of
6 state regulatory requirements, and therefore, the debtors are
7 compelled to honor workers' compensation obligations, simply
8 doesn't pass muster, particularly the focus of the preemption
9 concepts in federal law. To the extent that this statute in
10 Michigan purports to establish the priority of their claims
11 over all other claims that statute is preempted by the
12 Bankruptcy Code and is of no further force and affect. And in
13 our papers we have quoted to a number of cases, including In re
14 Law Corp. at 162 Bankruptcy 234, a 1993 Bankruptcy Court
15 decision in the District of Minnesota. In re Redford Roofing
16 Company, an Illinois case in the Northern District, a 1995
17 case, it's 54 B.R. 254, 255. And we tried to make clear that
18 to all the agencies we worked with and in Michigan that,
19 frankly, this Court is not going to use, and we believe in all
20 respects, absent a consent which does not exist here in the
21 plan or otherwise, is not going to use its equitable powers or
22 other principles to alter the Bankruptcy Code's priority
23 scheme. And we have looked to U.S. v. Nolan, the Supreme Court
24 case at 517 U.S. 535, 1996 case, which I think addresses that
25 concept.

1 Your Honor, I think that the -- in terms of the
2 argument here that there's a violation of 1129(a)(3) of the
3 plan because they will not be paid in full. Because the
4 agency's unfiled pre-petition workers' comp claims aren't
5 entitled to receive distributions under the Bankruptcy Code,
6 the conclusion that we think is inevitable from that that the
7 modified plan comports with 1129(a)(3) of the code.

8 They also point to an argument which is I think a bit
9 confusing. They basically say that neither New Delphi, the
10 company buyer, or General Motors' subsidiary that's acquiring
11 four of the KEIP sites in Michigan plus the steering business,
12 that they can't -- they won't be able to qualify self-insurers
13 following confirmation of the modified plan and they won't be
14 able to comply with state law as it relates to fulfilling
15 workers' compensation obligations. And, therefore, that's a
16 further violation of 1129(a)(3).

17 I don't understand that because in Michigan there are
18 multiple paths to be able to comply with that statute. Self-
19 insurance is only one of them. You can pool your workers'
20 compensation obligations. There are other ways you can meet
21 the requirements. And I don't believe there's anything they've
22 introduced in their objection, or anything in this record, that
23 would establish that there is no ability of either a General
24 Motors or the company buyer, to comply on a post-effective day
25 basis with the laws of the State of Michigan.

1 THE COURT: And what about the reorganized debtor,
2 that the assets that remain behind?

3 MR. BUTLER: I think that's the same situation, Your
4 Honor, particularly -- and we'll get to that. The fact of the
5 matter is, that our reorganized DPH Holdings which is going to
6 hold assets that are going to be wound down is going to have
7 actually no employees. It's going to have an authorized
8 representative which I'm going to identify in this hearing, as
9 part of the hearing. And it's going to contract out on a
10 management services basis the activities it needs to undertake
11 to complete that. And so I don't believe that that particular
12 activity, and reorganized DPH Holdings, may last for any period
13 of years while it undertakes its work, but it's not going to
14 have anyone, I think, going to necessarily be subject to those
15 laws. To the extent that the company --

16 THE COURT: If it did it would be a very small number
17 of people.

18 MR. BUTLER: It would be a very small number of people
19 and the company would -- obviously, reorganized Delphi, DPH
20 Holdings, expects to comply with all laws that are applicable
21 to it.

22 The other thing that they argue is that there's a
23 violation here. I addressed it briefly before. There's a
24 violation here under 28 U.S.C. 959(b) because they say that we,
25 as debtor-in-possession, won't comply with those applicable

1 laws. But, again, I don't believe -- they've used that statute
2 and the argument to basically say that because the pre-
3 petition, what I believe will be discharged workers' comp
4 claims, aren't going to be paid that that is somehow a
5 violation of the Bankruptcy Code and of 28 U.S.C. 959(b). And
6 I don't think you can basically turn the Bankruptcy Code on its
7 head and say okay, I didn't file a claim I'm going to be
8 discharged, those workers' comp claims aren't going to be paid
9 and, therefore, that's an independent basis under 959 to argue
10 that there's a violation. Because that gets you sort of in the
11 circular -- a circulatory of argument I don't think the Court
12 should sustain.

13 State law may well establish priorities for the
14 benefit of workers' compensation claimants outside of
15 bankruptcy, but as I said before the Bankruptcy Code in our
16 view, clearly preempts conflicting state statutes as discussed.

17 And I think the only other thing I'd like to address,
18 Your Honor, is their reliance on Bickford v. Load Star Energy
19 Inc. at 310 B.R. 70 at page 76. This was an Eastern District
20 of Kentucky case decided in 2004. And that's a case that
21 apparently required payment of a pre-petition claim in full.
22 In Bickford a district court reversed a bankruptcy court order
23 enjoining state officials for enforcing a post-petition bonding
24 requirement against holders of surface mining permits in the
25 ground that bonding requirements served, not only the state's

1 pecuniary interest, but also protect the state's citizens
2 against dangers of unreclaimed land and came within the police
3 power exception of the automatic stay.

4 In contrast, here, the Michigan Agency is not
5 challenging the debtors' post-petition compliance with the
6 state workers' compensation statutes and regulations because
7 we, in fact, are in compliance and will remain in compliance
8 with the post-petition obligations imposed on us.

9 Rather, they're asking the Court to say because we are
10 not prepared to pay or to find a way through the MDA parties to
11 pay pre-petition claims that for which no proof of claim was
12 filed, that we are -- and because -- and notwithstanding the
13 preemption provisions that are applicable here, our failure to
14 do that somehow brings us back under -- apparently, under their
15 argument, the police power exception, and makes the Bickford
16 case applicable.

17 We simply believe it is not. We ask Your Honor to
18 find that the objection is without merit and to overrule it.

19 THE COURT: Okay. I understood that the agency wanted
20 to rest on its papers, but having heard the argument does it
21 have anything further to say?

22 Okay. I'm going to overrule this objection to
23 approval of the plan modification motion.

24 First, I seriously question the standing of the
25 Michigan Workers' Compensation Agency, given that it did not

1 file a claim by the bar date established in this case, and has
2 not sought over the last -- I guess it's over three years since
3 the bar date was established, to do so under Rule 9006.

4 But even assuming that the agency did have standing to
5 protect that hypothetical and currently barred claim, I believe
6 that the objection is not well taken. As I read it, the
7 objection is focused upon the debtors' obligations with respect
8 to pre-petition workers' compensation claims which under the
9 Bankruptcy Code's priority scheme are not entitled to payment
10 in full given the value of these debtors as established by the
11 exhibits, including Mr. Shore's.

12 The federal priority scheme under the Bankruptcy Code
13 cannot be modified by state action. In that regard, I agree
14 with the debtors and their citation to In Re Olga Coal Company,
15 194 B.R. 741 at 746 (Bankr. S.D.N.Y.), as well as In re Redford
16 Roofing Company, 54 B.R. 254, 255 (Bankr. M.D. Illinois 1985).

17 The argument that Michigan made by regulation override
18 the priority scheme of the Bankruptcy Code, I believe also is
19 inaccurate, at least as it applies to these claims. This is, I
20 believe, a true pecuniary claim seeking payment of pre-petition
21 obligations. And, therefore, I believe does not run afoul of
22 28 U.S.C. 959(b). If it did, then the amounts would have been
23 sought and paid years ago.

24 The objection also, although, not that clearly, raises
25 perhaps an issue as to the payment of performance of workers'

1 compensation obligations going forward, that is after the
2 closing of the transactions contemplated by the plan
3 modification motion. The debtors have confirmed their
4 agreement as the reorganized debtor to comply with their
5 obligations under the Michigan regulations with regard to
6 workers' compensation post-closing, based upon the exhibits and
7 the underlying agreements before me. I believe that the
8 debtors are correct that those obligations will be minimal and
9 that the debtors will lack sufficient resources to perform the.

10 As far as the performance by GM, that is New GM, and
11 the DIP lender acquirers going forward, to the extent that is
12 an issue before me, I believe that they are (a) sufficiently
13 incentivized to perform their obligations in respect of workers
14 compensation going forward, and, secondly, have sufficient
15 wherewithal to do so. Again, based upon the record before me.

16 The last basis for the objection is an argument that
17 the payment under the confirmed Chapter 11 plan of these
18 obligations or the provisions for their payment under the
19 confirmed Chapter 11 plan now estop the debtors under various
20 estoppel theories from treating them as a claim subject to the
21 priority rules of the Bankruptcy Code. I conclude that there
22 is not a basis for estoppel on those facts. The plan
23 modification exhibits make crystal clear that the debtors
24 financial circumstances have drastically changed between the
25 confirmation of the present plan on file and the plan

1 modification, such that clearly the debtors' resources are not
2 sufficient to pay a "par plus accrued recovery" to unsecured
3 creditors, as the original plan provided. And, instead, the
4 debtors' estates have the value as detailed in the declarations
5 that have been submitted, and as borne out by the auction
6 process that provides for greatly reduced ability to pay pre-
7 petition claims. Therefore, if the debtors today in fact tried
8 to pay these claims in full or a par plus accrued recovery,
9 they would be violating the Bankruptcy Code.

10 Clearly, the confirmed plan had as a condition to its
11 going effective, the closing of the EPCA or investor agreement,
12 which did not occur. The plan obviously since it had that
13 condition to its going effective contemplated the possibility
14 of its not going effective, including the breach or termination
15 of the EPCA. Consequently, I don't see a basis for estoppel
16 given that the document upon which estoppel is asserted
17 contemplates the possibility of the treatment that is currently
18 being afforded to the claims of the agency, to the extent it
19 has an assertible claim, as well as all other unsecured
20 creditors.

21 Moreover, as far as equitable estoppel is concerned,
22 as I said it would be highly inequitable to elevate these
23 claims which are substantially similar to other unsecured
24 claims over those claims.

25 So for those reasons, I'll deny the objection.

1 MR. BUTLER: Thank you, Your Honor.

2 Your Honor, the next category of objections we'd like
3 to address is the taxing authority objections. The are the
4 objections of Howard County Indiana, at docket number 18218.
5 And the Texas Taxing Authorities objection at docket number
6 18194.

7 I should indicate to the Court that both of these
8 objectors hold allowed claims. In the case of Howard County I
9 believe it's an allowed priority claim and allowed secured
10 claim in different proportions. In the case of Texas, the
11 Texas Taxing Authority is making a primarily allowed secured
12 claim.

13 The Howard Count taxes involved here relate, I
14 believe, to the Kokomo, Indiana facility, which is under the
15 proposed plan and under the master disposition agreement, going
16 to go to the General Motors subsidiary. And he Texas Taxing
17 Authorities taxes go to, I believe, assets that will be
18 retained in DPH Holdings Inc.

19 With respect to Howard County, my understanding is
20 that they have received the appropriate assurances that make it
21 crystal clear that to the extent that they hold an allowed
22 priority and secured claim and notwithstanding any discharge of
23 claims under the plan, that a General Motors subsidiary will
24 take those claims and pay them in accordance with the plan
25 treatment proposed. I believe that their remaining objection

1 is now focused on whether or not the fact that they don't like
2 our proposed plan treatment in terms of the stretch out or
3 either the impairment of the secured claim by how we propose to
4 treat it or the stretch out of the priority claim which we
5 think this is a pre-BAPCPA case is permitted as we have
6 proposed.

7 And I believe that the Texas Taxing Authorities' claim
8 is similarly based on the objections to the treatment that we
9 propose.

10 So we should deal with those first, and I think
11 counsel for, both Howard County and Texas, are here to argue
12 their objections.

13 MR. POWLEN: Thank you, Your Honor. For the record,
14 my name is David Powlen with the law firm of Barnes and
15 Thornburg for the Taxing Authority Howard County Indiana. Also
16 referred to under the MDA as Kokomo, Indiana. We can think
17 about those two descriptions as one and the same, Your Honor.

18 Mr. Butler teed this up very well. We have had the
19 good fortune this morning to have conversations with, both
20 debtors' counsel and counsel for the GM buyers, and have
21 confirmed that the GM buyers are picking up all three aspects
22 of the county's tax claims. We have a post-petition
23 administrative claims, with respect to which we filed an
24 administrative expense claim form on July the 14th in the
25 amount of 11,369,193 dollars, which includes an estimated

1 component. We also have, as Mr. Butler alluded to, both a pre-
2 petition secured claim which will be treated under Section 5.1
3 of the plan, and also, an unsecured priority claim to be
4 treated under Section 2.2 of the plan.

5 Now, that we've confirmed that it's the GM buyers
6 picking up these taxes, Your Honor, we would like to be heard
7 very briefly on the issue of the timing of the payment. And as
8 a little bit of background, Howard County not only has the
9 Delphi bankruptcy impacting on its ability to collect taxes,
10 but also has been impacted by the Chrysler bankruptcy. The
11 facilities for Chrysler in this county and the Delphi
12 facilities are literally just down the road from each other.

13 The proposed treatment, as I'm sure the Court is
14 aware, under Section 5.1 of the plan with respect to the
15 secured claim, is for a payment over seven years at an interest
16 rate, which is essentially based on the concept that the Till
17 case provided, with respect to a Chapter 13 case and with
18 respect to a party that's in the business of lending money. We
19 respectfully submit, Your Honor, that the county is not in the
20 business of lending money. We are completely different and
21 should be distinguished from the teachings of the Till case.
22 We are a tax collector. And we're not in the business of
23 having our taxes strung out, potentially in this situation, up
24 to eleven years from March 1, 2005 for eleven years under
25 Section 5.1 of the plan with respect to our secured --

1 THE COURT: Can you remind me, does 5.1 actually
2 specify a rate?

3 MR. POWLEN: It provides a treasury bill rate, plus, I
4 believe, 200 basis points for a so-called risk, Your Honor. We
5 would suggest that in lieu of that, Indiana provides a post-
6 judgment tax rate under Indiana Code 24-4.6-1-101(2). It
7 provides for an interest rate of eighth percent on post-
8 judgment sums. We would submit, Your Honor, that by analogy
9 the plan confirmation order, would equal a judgment with
10 respect to the Indiana Code provision. And would ask that both
11 our secured claim and our priority unsecured tax claim in
12 Section 2.2 of the plan be treated with an eight percent
13 interest rate as opposed to what the plan has otherwise
14 provided.

15 THE COURT: And the priority claim, that rate is not
16 specified, right. It just says whatever rate is appropriate?

17 MR. POWLEN: I believe that's the case, under
18 applicable -- I think it may be a reference to a statute or
19 other applicable law, that's correct.

20 Now, we also have a difficulty here, Your Honor, and
21 I'd like to introduce the legal basis for our argument for just
22 a moment. Under 1127(b), the plan as modified becomes the plan
23 only if two things happen. Number 1, if circumstances warrant
24 such modification and the debtor, otherwise, complies with all
25 the confirmation requirements under 1129. We believe that with

1 respect to Howard County's unique circumstances that
2 Circumstances do not warrant a change. Under the original
3 plan, as confirmed by this Court, Your Honor, there was a
4 provision that the secured portion of our tax claim would be
5 treated no worse than the payment period with respect to the
6 priority unsecured claims under Section 2.2 of the plan.
7 Translating that into specific dates, because the -- we're
8 dealing with the prior version of the code, we're dealing with
9 the pre-'05 amendments here in this case. It's essentially
10 equal payments over not more than six years from the date of
11 assessments. In this case the date of assessment was March 1
12 of 2005. So with respect to the priority unsecured tax claims
13 that we have, the last installment would have to be paid to us
14 no later than March 1 of 2011.

15 Under the plan with respect to -- in contrast, with
16 respect to our secured claim, we are looking at seven years,
17 the last installment being paid to us up to seven years after
18 confirmation -- after the effective date, I should say, of this
19 plan.

20 We would respectfully ask, Your Honor, that the
21 debtors be required, because circumstances do not warrant it,
22 and also because it's not really fair and equitable under
23 1129(b) and the Court is well aware that 102 of the Bankruptcy
24 Code refers to the word "includes" as not limiting. So we have
25 a mixed argument here that circumstances do not warrant, and

1 it's simply not fair and equitable for our secured claim to be
2 strung out much longer than our priority unsecured claim. And
3 especially given that the original plan here, as confirmed by
4 this Court, provided for the same treatment for our secured tax
5 claim as it did for the priority unsecured tax claim.

6 Otherwise, Your Honor, we would reset on our written
7 submission, document number 18218.

8 THE COURT: How does the eight percent satisfy Till?

9 MR. POWLEN: Well, Your Honor, we would just say that
10 Till is distinguishable. We are not in the business of lending
11 money. We're in the business of collecting --

12 THE COURT: No. But the analysis that the Supreme
13 Court said to undertake in Till?

14 MR. POWLEN: Well, again, I think it was in the
15 circumstance of a party that's in the business of lending money
16 that can adjust its -- the interest rate that are otherwise
17 charges to all of its borrowers based on the statistical
18 certainty that certain of those contracts will go under
19 default. There's that risk factor that the Court, of course,
20 refers to in Till. In this case we're a taxing authority,
21 we're not in the business to adjusting for anything to
22 accommodate for the possibility of default. We would, again,
23 simply ask the Court to take us back to the default rate of
24 eight percent provided by the Indiana Code for post-judgment
25 interest.

1 As a further background, Your Honor, under the Indiana
2 Code, if we were outside of bankruptcy there would be a ten
3 percent penalty each six months that these installments of
4 taxes would not be paid. We understand that that's obviously a
5 penalty that this Court is not going to allow that, but we're
6 simply asking for the next best thing, which would be a simple
7 interest rate of eight percent.

8 THE COURT: Okay.

9 MS. KELLEY: Eurgeice Kelley for the Texas Taxing
10 Authority.

11 THE COURT: Can you speak up louder?

12 MS. KELLEY: Sure. The Texas Taxing Authorities are
13 dozens of municipal taxing authorities who are fully secured ad
14 valorem tax creditors holding unavoidable first priority
15 statutorily perfected liens. We rely on timely payment of
16 taxes to meet budgets and provide vital services.

17 As such, we negotiated long and hard to reach an
18 agreement under the current plan to receive a superpriority
19 above other secured creditors, as reflected in paragraph 63 of
20 the confirmation order.

21 Under the modified plan we lose this special status
22 and are treated identically to other secured creditors,
23 uniquely penalizing us under the modified plan. The proposed
24 seven-year payout for our 2005 taxes is unreasonable. Our 2005
25 taxes won't be paid until 2015. And we have liens on the

1 debtors' personal property and giving the deteriorating nature
2 of the collateral we object to such a lengthy payout.

3 The proposed modified plan violates Section 506
4 because it does not ensure payment of the Texas statutory rate
5 of post-petition interest of twelve percent. The modified plan
6 failed to provide adequate post-confirmation interest. You
7 were just discussing Till, and I think this situation is
8 distinct because we are not similarly situated as other secured
9 creditors. As my colleague was just saying, we're not in the
10 business of lending money, we're municipalities providing
11 services.

12 We also want to confirm that if there's a 363 sale
13 that our liens would attach to the sold property in the order
14 and priority that they presently have. And we understand
15 everyone is taking a haircut under the modified plan, but the
16 modified plan should, at least, maintain the same structure and
17 priorities that there were under the current plan and the
18 taxing authorities should not be treated as other secured
19 creditors.

20 We otherwise rest on what's in our papers.

21 THE COURT: Well, ultimately, we're focused on 1129,
22 right, 1129(b), which applies to all secured creditors. So
23 what distinguishes your client's right to get the present value
24 in the interest of the collateral over this time from anyone
25 else. You know, why is twelve percent the right number when

1 the focus is on the requirement to provide you with deferred
2 cash payments totaling, at least, the amount of such claim of a
3 value as of the effective date of the plan, of the at least the
4 value of such holders interest in the estate's interest in such
5 property?

6 MS. KELLEY: Section 506. And I must admit, Your
7 Honor, I'm a local counsel. So I can't provide the arguments
8 that the lead counsel would have. But our argument is that
9 it's violating Section 506.

10 THE COURT: Okay. Mr. Powlen, you want to --

11 MR. POWLEN: Yes, Your Honor. I guess my analogies
12 we're asking for eight percent. If I may --

13 THE COURT: No, I understand. It kind of cuts both
14 ways.

15 MR. POWLEN: I'm happy to speak also --

16 THE COURT: I mean, ultimately -- I appreciate that a
17 delay in payment may affect the counties' budgets and their
18 ability to deliver services. But the requirement in the code
19 doesn't really talk about the impact on the creditors, so much
20 as preserving the present value interest rate, the value of the
21 collateral --

22 MR. POWLEN: Your Honor, there's a strong policy here
23 that's evident under, both the current provisions of the
24 code -- you'll recall that under the current provisions of the
25 code a secured tax claim cannot be paid out over any longer

1 period of time than a priority unsecured tax claim. If this
2 case had been filed a few days later we wouldn't be having this
3 argument right now. Defaulting back again to our argument that
4 circumstances don't warrant, the debtors' original plan in this
5 case --

6 THE COURT: No, I understand that point. I just want
7 to focus on the Till argument and 1129.

8 MR. POWLEN: Understand. And, again, as we said
9 before, at least in my argument, the tax authorities are not in
10 the business of lending money.

11 THE COURT: I understand that distinction. But,
12 ultimately, we're looking at preserving the present value of
13 the collateral through these payments. And why is eight
14 percent right, why is twelve percent right, why is T bills plus
15 2 right? It's hard for me to know without having some facts
16 behind it.

17 MR. POWLEN: Understand, Your Honor. And the best
18 thing we can do is the Indiana post-judgment rate of eight
19 percent. And I assume that the taxing authorities from
20 Texas --

21 THE COURT: But that applies to anybody. That could
22 apply to, you know, someone's old clunker pickup truck.

23 MR. POWLEN: That's true. But in that situation that
24 party was in the interest of lending money --

25 THE COURT: No, I'm talking about -- that was a bad

1 analogy. Say you got a lien on someone's house. There house
2 is different to value and the risk on a house is different to
3 value, I assume, then a Kokomo plan run by GM. I mean, how do
4 you propose that I determine how to preserve the present value
5 of Howard County's interest in this Kokomo plant, which is I
6 think probably unique, right?

7 MR. POWLEN: Very good, Your Honor, yes.

8 THE COURT: And it's operated by GM?

9 MR. POWLEN: Yes.

10 THE COURT: Not being shut down.

11 MR. POWLEN: Yes.

12 THE COURT: So why is the twelve percent interest rate
13 -- I mean, is there any correlation to anything there, are
14 there any secured financings secured by the Kokomo plant
15 currently?

16 MR. POWLEN: I believe there would be pre-confirmation
17 and post-confirmation. But I honestly can't address that rate,
18 Your Honor, I apologize.

19 THE COURT: I have the same question as far as the
20 facilities in Texas.

21 MS. KELLEY: Our argument is that the risk factor
22 described in Till is as applied to a taxing authority was built
23 into the statutory rate.

24 THE COURT: But that can't be, right, because you have
25 all sorts of different pieces of collateral that would be

1 covered by a tax lien, that are a different risk.

2 MS. KELLEY: Well, unlike other --

3 THE COURT: Well, you could have a lien on a piece of
4 property that's just been warehoused and not being maintained
5 and falling apart. You can have a lien on the most gleaming
6 new factory built. You can have a lien on, you know, an
7 environmentally challenged facility, or a nuclear power plant.
8 All of those I think would have different rates on them,
9 wouldn't they?

10 MS. KELLEY: Right. But we didn't have an
11 underwriting process where we selected which property we were
12 going to have a lien on. It's, you know, a statutory --

13 THE COURT: Okay.

14 MR. BUTLER: Your Honor, responding first to Howard
15 County. The -- and, again, with respect to their secured
16 claim, I do think that we have met the requirements under
17 Section 3.2 of the modified plan. We separately classified all
18 secured claims, and we have provided their liens will continue
19 on that property. And we have provided that they will get
20 paid, you know, we believe an appropriate interest rate, that
21 certainly complies we think with Till v. SEC Credit Corp. I
22 don't think you just have to be a lender of money to have the
23 Till concepts apply.

24 We --

25 THE COURT: But how do I know that the T bill plus 2

1 is the right rate?

2 MR. BUTLER: Your Honor, I mean, other than -- I don't
3 think there's any -- I think that's a good question in the
4 sense there's no magic to this. I think that ultimately I
5 think the guidance from Till is that there be -- that the rate
6 of interest there was a base rate plus an interest rate
7 adjustment in accordance of the risk. I don't think that
8 either of these objectors have introduced any competent
9 evidence to suggest that there's any special risk associated
10 with their collateral that would cause the Court to make an
11 adjustment from what the debtors' proposed in terms of its
12 treatment under the plan.

13 And it seems to me that the -- you know, certainly
14 saying we'd like to have the rate in our own state applies for
15 post-judgment rates, and it sounds like it's a default rate, by
16 the way, in the way it's constructed --

17 THE COURT: Well, I don't know about Texas, the other
18 one I don't think is, right, because there's a penalty on top
19 of it, for Howard.

20 MR. BUTLER: Right.

21 THE COURT: Texas I'm not sure.

22 MR. BUTLER: And, Your Honor --

23 THE COURT: Twelve percent is pretty high.

24 MR. BUTLER: Your Honor, we selected -- we
25 basically -- our plan is premised on the concept that the

1 seven-year treasury rate was appropriate as we stretched these
2 out for seven years. When you look you just sort of say,
3 what's the premise of maintaining value, which is the
4 requirement when you're cramming down? What is the requirement
5 of maintaining value? And we thought, and I still believe,
6 that looking at the seven-year treasury rate is as good a proxy
7 for that as appropriate as possible. And then we assigned a
8 premium to that recognizing the guidance in Till and the --
9 and, you know, Till talked about some type of adjustment. And
10 I think we picked sort of in the middle of the fairway in 200
11 basis points. But I don't think there's anything more magical
12 than that. That was the assessment we put in the plan, I think
13 it's a reasonable basis for it. And I think an objector comes
14 before you they have to provide competent testimony and
15 evidence which suggests that that is an unreasonable rate. Not
16 that you should just pick some other rate.

17 THE COURT: So you think that the burden shifts to
18 them?

19 MR. BUTLER: Well, I think my only burden, Your Honor,
20 in a plan is to propose a reasonable rate. And I think it's --
21 I think the Court can sort of draw its own conclusions, but if
22 you're stretching something over seven years, you say what's a
23 reasonable base rate to apply, looking at the seven-year
24 treasury rate is as reasonable rate as any other rate I can
25 think of to think about that. And then applying a premium to

1 it. And we applied a premium.

2 And what's happening is Howard County is saying gee,
3 you applied a 200 basis point premium, I want a 500 basis point
4 premium, which is, essentially, how they worked out. And you
5 say well, how come, 500 basis points as opposed to 200 basis
6 points? And they don't really have the answer to that, we like
7 500 basis points because that equates to what our statute says.

8 And, essentially, Texas says give us 900 basis points
9 because we like twelve percent. But there's no evidence in the
10 record to suggest that that's adjusting for some risk to the
11 collateral that the liens are attaching to. And that's my only
12 point, Your Honor. I mean, we've tried on that basis to
13 address things we think appropriately under the plan.

14 THE COURT: And what about the point that Mr. Powlen
15 made about 1127, what circumstances require this change in the
16 plan?

17 MR. BUTLER: I'm sorry, in terms of modifying what?

18 THE COURT: Modifying the treatment of the taxing
19 authorities?

20 MR. BUTLER: Your Honor, that I think is fairly simple
21 in terms of trying to sort out an overall transaction here that
22 was -- that meet the requirements of 1127 and would have the
23 support of all stakeholders to -- and as I think counsel for
24 Texas acknowledged, everybody here has had to sacrifice
25 something. The conclusions that the debtors reached that we

1 need to impair pre-petition secured classes but still meet our
2 requirements which was to provide them the value of their
3 liens, to maintain the value of their liens over -- in this
4 case, we're proposing to pay the actual balance over time and
5 to pay them an interest rate to measure it with, we think, the
6 risk associated with it. But it's nothing more than trying to
7 develop in a case where we've had to work very hard to provide
8 for administrative claims, and in a case where DIP lenders are
9 bidding in 3.4 billion dollars worth of debt, and not on the
10 effective date receiving anywhere near that, certainly in cash.
11 The construction of this modified plan was designed, Your
12 Honor, to take into account what was happening on the entire
13 waterfall. And I'll talk about the waterfall later. But
14 there's, in fact -- in fact, I can -- it's in your -- let me
15 just go to that plan exhibit. And if I can ask -- it's in
16 your book, Your Honor, it's Exhibit 31.

17 (Pause)

18 MR. BUTLER: Your Honor, Plan Exhibit 31 -- it's
19 actually Joint Exhibit 53, Slide 31 -- basically has the fabric
20 of the distributions under the modified plan in this pure
21 credit bid. It says the scenario; it's actually the pure
22 credit bid transactions before the Court. And everything
23 above -- this is a waterfall that includes both post-petition
24 and pre-petition liabilities. And as was -- I think Your Honor
25 understands, there was not enough cash or enough value to

1 actually pay everything above the line, all the post-petition
2 liabilities in this case. And they've all been negotiated on a
3 consensual basis. And that consent was based on a transaction
4 structure that dealt with everything below the line getting
5 value where it might not otherwise have received value. And I,
6 frankly, think it may very well be that the liens in the case
7 of Texas, in particular, the value of the liens of that
8 property may be highly speculative but it didn't matter for our
9 purposes because we're in the ones -- and frankly, I think the
10 value of the liens for Howard County absent a transaction where
11 Kokomo was actually operated by somebody as opposed to being
12 closed was also quite speculative. And so, we tried to come up
13 with an overall transaction that worked.

14 As Your Honor sees in terms of the post-petition
15 liabilities here, there are some that are being dealt with in
16 cash or being paid a hundred cents. But in the case of carve-
17 out claims, those are being paid cash. The tranche A, B and C
18 claims are getting -- being treating under the pure credit bid.
19 The hedge obligations that are secured or cash are assumed by
20 General Motors. If you go down the post-petition waterfall,
21 superpriority claims are being dealt with under the -- in cash
22 or assumed by GM under MDA.

23 If you look at administrative claims, they're being
24 dealt with either by cash being rolled over or assumed on a
25 very carefully negotiated structure. General Motors has waived

1 the 1.7 billion dollar claim. It's an administrative claim.
2 It's in order to make this work. And those parties help the
3 debtors work out the structure of what would flow through on
4 the pre-petition side. And the first one that you get is pre-
5 petition secured claims and priority claims. And people
6 recognize the obligations under the Code if we're going to do
7 this through a plan as opposed to a sale. And therefore, there
8 had to be value that was allocated to those.

9 In the case of the priority claims, there otherwise
10 would have been no value allocated to those at all. They were
11 not secured; they had no property; they had no lien rights.
12 And the treatment you have under the plan, as we've described
13 it, using the stretch out and the applicable statutory --
14 applicable rate that would apply to that obligation. And I
15 think, by the way, I take the point on priority claim one, Your
16 Honor, that the plan does not have a specific rate applicable
17 across all the claims because the intention was that it would
18 be the lowest applicable rate state by state that you could
19 look to to find what the applicable rate was as to that
20 particular treatment of that claim.

21 With respect to secured claims, we had an obligation
22 under Till to find a way to maintain an appropriate structure
23 and the structure for that, as I've described to you, was to
24 allow those holders to maintain their lien interests to pay the
25 balance debt on their -- to stretch them out over seven years

1 and use the seven year T-bill rate plus 200 basis points. And
2 then I can go further down. Obviously, Your Honor is aware of
3 the settlement with the general unsecured creditors. I'm going
4 to get to the PBGC settlement in a few minutes. And everything
5 else gets wiped out which was the effect of the MBL settlement
6 Your Honor approved last week, the revised settlement.

7 So the answer to the question, Your Honor, from the
8 debtors' perspective, as laid out in this exhibit, is in order
9 to provide value below the black line to pre-petition holders
10 of claims, except whatever nominal value a secured tax claim
11 could have had in property that might not have had much use in
12 a liquidation, the fabric of the deal above the line where we
13 had to deal with a hundred percent claims led to this overall
14 consensual transaction and we believe that the construct with
15 respect to pre-petition liabilities is entirely consistent with
16 the Bankruptcy Code and should be approved by Your Honor.

17 THE COURT: Okay. Under the original -- under the
18 plan that's currently confirmed, these claims -- the secured
19 claims were not cashed out, were they ?

20 MR. BUTLER: No. Under the -- well, on the effective
21 date of the plan, the secured claims would have been paid in
22 accordance with their terms. There was no stretch-out.

23 THE COURT: Okay.

24 MR. POWLEN: We understand the Court's very familiar
25 now with our arguments, Your Honor. We would just simply go

1 back to under 1127(b). It's clearly the debtors' burden to
2 show that circumstances warrant. It's also their burden to
3 show that our treatment is fair and equitable. And we would
4 like to be excused, Your Honor, once this aspect of the hearing
5 is closed.

6 THE COURT: Okay. I'm still -- there's one issue --

7 MS. KELLEY: We also just want to reiterate that
8 circumstances aren't warranted under 1127 and we would like to
9 be excused when this portion is over.

10 THE COURT: Okay.

11 MS. KELLEY: And even if we do not get twelve percent,
12 we certainly need more than the proposed rate,. The Treasury
13 rate plus the premium work out to approximately five percent
14 per annum. Our collateral are car parts in Texas and no
15 reasonable lender in the world would lend on mufflers and
16 transmissions for cars that may or may not be discontinued at
17 that rate.

18 THE COURT: You don't cite any cases that -- I'm not
19 familiar with cases pre-BAPCPA that impose a BAPCPA type
20 requirement in this context.

21 MR. POWLEN: I believe that may be the case, Your
22 Honor. Honestly, I did not come fully briefed on that issue.
23 But we also have the debtors own plan here. Again the repeat.
24 Their plan, as confirmed, as it sits right now before this
25 Court that it now wants to modify essentially mirrored the

1 concepts of the current Code provisions. Again, that's
2 evidencing this policy that we're referring to, we again
3 respectfully submit that you have provisions in the Code with
4 accept taxing authority, some from the Till analysis just on
5 that basis.

6 THE COURT: But not the Code, in effect, for this
7 case.

8 MR. POWLEN: Right. But again, it's the debtors' own
9 plan that mirrors the Code provisions here -- that are now in
10 effect for cases that get filed currently. And they're now
11 changing. They're now changing our treatment to the seven-year
12 stretch-out. Otherwise, we'd have to get paid on the same time
13 frame as our priority unsecured claims which would make sense
14 since our secured claim obviously has a higher priority in the
15 absolute priority rule.

16 MR. BUTLER: That just absolutely -- I got to say,
17 Your Honor, the last argument just makes no sense to me. The
18 debtors -- and, Your Honor, I think the record in this case is
19 very clear. The debtors have never assumed in this case any of
20 the burdens -- I guess some people think they're benefits but I
21 think they're mostly burdens -- of the amendments in 2005 with
22 respect to a debtor-in-possession. And there's nothing in our
23 prior disclosure documents, the confirmation or anything else,
24 that imposes or assumes the burdens of the 2005 amendments
25 here.

1 What happened was that case was a case where in that
2 world we lived in when the unsecured creditors were getting
3 something at par plus accrued at a negotiated plan value of
4 north of twelve billion dollars that there was -- the secured
5 creditors across the board, not just taxing authorities, were
6 paid in accordance with their terms at that time. I think
7 that -- at least, I certainly think the Court's already
8 recognized, but I would urge the Court to recognize based on
9 the uncontroverted testimony in the record from the debtors'
10 witnesses that the debtors have complied with 1127 in changed
11 circumstances. There are extraordinary changed circumstances
12 in this case. And I would again point to --

13 THE COURT: No. That's okay. You don't need to do
14 that.

15 MR. BUTLER: Okay.

16 THE COURT: That's okay.

17 MS. KELLEY: If I may, Your Honor, you were asking
18 about pre-BAPCPA cases. The case we cited to, In re Marfin
19 Ready Mix Corp., 220 B.R. 148, Judge Cyganowski out on Long
20 Island found that tax claims got post-confirmation statutory
21 rate.

22 THE COURT: No. But I was focusing on any -- that
23 didn't really address my question which is whether BAPCPA was
24 simply implementing case law that existed before its enactment
25 on its treatment of secured claims, secured tax claims as

1 opposed to the priority claims. I don't think that that case
2 really addresses that point.

3 All right. I have two objections to the plan
4 modification motion by taxing authorities, Howard County in
5 Indiana and various Texas taxing authorities leading off with
6 Angelina County and ending with Valley View ISD. Both
7 objectors raised similar issues although -- and I was just
8 looking through the objections again. I think one of the
9 issues that was raised in oral argument today wasn't raised in
10 either of the objections.

11 Let me deal with that issue first which is that the
12 modification of the confirmed plan under 1127 to provide for a
13 uniform stretched out treatment of secured and priority tax
14 claims is not justified under the circumstances.

15 (Audio technical problem)

16 -- the Texas counties if you looked at them in
17 isolation. Given the size of the Howard County tax claims, I
18 doubt that even if one were to look at Howard County in
19 isolation, that would be the case. But I don't believe that I
20 should look at just the two objectors here in determining
21 whether circumstances warrant. Instead, I should look at all
22 of the similarly situated creditors because I believe that the
23 circumstances that apply here are the fact that notwithstanding
24 the very adverse condition of the debtors' industry as well as
25 the condition of the capital markets, the debtors have been

1 able to negotiate a transaction that apparently will enable
2 them to exit Chapter 11 that involves a significant input of
3 new money and the assumption of liabilities so that the -- by
4 and large, except for the excluded assets, the assets subject
5 to liens including the liens of these two objectors (audio
6 technical problem) -- plant that secures the Howard County's
7 tax lien and the facility subject to the Texas County tax lien,
8 I'm told, although that neither the objection nor the reply
9 specifies the exact collateral will be in facilities acquired
10 by the DIP lender acquirer vehicle.

11 However, it appears clear to me that given the
12 difficulty of achieving those two transactions, neither GM nor
13 the DIP lenders have an open wallet and that their agreement to
14 operate these plants or these facilities is conditioned upon
15 the treatment under the plan of those having liens on them, at
16 least as far as GM is concerned. And therefore, they're very
17 focused on the amount that would need to be paid in connection
18 therewith. That also goes for the priority claims that GM is
19 assuming in connection with the Howard County facility.

20 So I believe circumstances do warrant the treatment
21 here of other secured claims and priority claims as differing
22 from the very -- from the treatment under the confirmed plan
23 which was confirmed under very different and far more
24 economically plushy circumstances. So I believe that this plan
25 modification is warranted under Section 1127.

1 That leaves the issue of the appropriate period for
2 the payment of the claims and the appropriate rate to reflect
3 that the claims are being paid over time. As far as the
4 appropriate period is concerned, I see nothing unreasonable in
5 connection with these objections related to the period that is
6 provided for in the plan. It's true that Congress amended data
7 to address -- (audio technical problem) -- rate is appropriate
8 and there's no testimony that the collateral will disintegrate
9 or disappear or otherwise be affected sometime before the
10 period expires that the debtors can pick any appropriate
11 period. And the period here, I believe, is appropriate in the
12 absence of any evidence to the contrary and assuming GM wants
13 the Kokomo plant because it wants to continue making cars there
14 for several years.

15 That leaves the amount of the rate. And the Court
16 really is directed here to Section 1129(b)(2)(A)(i)(1) and (2)
17 in determining what the appropriate rate is for secured claims
18 that's not paid in full on the confirmation date in a cram down
19 situation. And I am guided somewhat by Till v. SCS Credit
20 Corporation, 541 U.S. 465 (2004) in determining the proper
21 post-confirmation rate to apply in finding that the deferred
22 cash payments totaled at least the allowed amount of the
23 secured claim with a value as of the effective date of the plan
24 of at least the value of such holder's interest in the estate's
25 interest in the property.

1 The debtors propose a T-bill rate equal to the seven-
2 year payment period plus two percent as a risk factor. That
3 certainly fits the general guidelines of Till which stated that
4 the Court should apply a formula which entails a
5 straightforward familiar and objective inquiry and minimizes
6 the need for potentially costly additional evidentiary
7 proceedings. And stated however, in connection with that
8 directive that the Court should consider the state of financial
9 markets, the circumstances of the bankruptcy estate and the
10 characteristics of the loan, in extension of involuntary
11 credit.

12 Both the taxing authorities simply say that their own
13 statutory rate should apply. However, I believe those
14 statutory rates -- they're little, if any, relationship to the
15 factors that I just outlined. They don't fluctuate with the
16 economy. They're fixed. They apply to all collateral as
17 opposed to the debtors' property that serves as collateral for
18 these taxing authorities. And they don't take into account
19 that this collateral will be operated by the respective
20 acquirers as a going concern. And -- unless it's to be sold in
21 which case obviously the lien can be asserted.

22 So under all of those circumstances, it appears to me
23 that absent any additional evidence that the rate chosen across
24 the board by the debtors is appropriate here. And therefore
25 I'll overrule the objection on that basis.

1 MR. POWLEN: Your Honor, just one matter of
2 clarification. You'll recall that Howard County also has the
3 unsecured priority --

4 THE COURT: Well, that I view as -- I mean, I'm not
5 really --

6 MR. POWLEN: I understand.

7 THE COURT: There's no rate. It's just the rate
8 proper under applicable law. So --

9 MR. POWLEN: We were seeking your guidance.

10 THE COURT: And what Mr. Butler said, I think your
11 eight percent is the lowest rate. Now maybe they'll find
12 another one for Howard County somewhere in the books but --

13 MR. POWLEN: Fair enough.

14 MR. POWLEN: Thank you.

15 MR. BUTLER: Your Honor, can I have just one moment,
16 please?

17 THE COURT: Yes.

18 MR. POWLEN: And if we may be excused, Your Honor?

19 THE COURT: Yes. Oh, ma'am, I think the microphone
20 didn't pick up your name. Could you state it again for the
21 transcript?

22 MS. KELLEY: Eurydice, E-U-R-Y-D-I-C-E, Kelley with an
23 E-Y.

24 THE COURT: Thank you.

25 MR. BUTLER: Your Honor, one thing I want, if I can

1 bring to the Court's attention 'cause I do want the record to
2 be accurate. I thought I said this during my argument but I
3 just want to make sure it doesn't change Your Honor's views.
4 With respect to Howard County, Howard County does, in fact --
5 this does reply to Kokomo. Kokomo is moving under the proposed
6 transaction. But I thought I'd said, and I want to say it
7 again, that DPH Holdings will retain the Texas tax liabilities.

8 THE COURT: You did. And I --

9 MR. BUTLER: Okay.

10 THE COURT: And I think I said that, too.

11 MR. BUTLER: Okay. I'm sorry. I thought I heard
12 something different. That's why I want --

13 THE COURT: GM's doing Kokomo and the DIP acquirer is
14 doing Texas facilities.

15 MR. BUTLER: Well, no. That's why I want to be clear.
16 DPH Holdings Co. is going to be old Delphi as we sit and
17 describe --

18 THE COURT: Oh, I'm sorry.

19 MR. BUTLER: -- old Delphi.

20 THE COURT: Okay.

21 MR. BUTLER: And new Delphi at the moment is called
22 DIP Co. 3 or something.

23 THE COURT: Well, in that case, it's --

24 MR. BUTLER: It's going to get a different name.

25 THE COURT: -- likely to be sold.

1 MR. BUTLER: That's right. It is, Your Honor.

2 THE COURT: So then they can assert their lien
3 probably a lot faster than seven years from now.

4 MR. BUTLER: That's probably correct, Your Honor.

5 THE COURT: All right. I don't think that changes my
6 ruling.

7 MR. BUTLER: Okay. I just wanted the record to be
8 clear.

9 THE COURT: I appreciate that clarification.

10 MR. BUTLER: Thank you, Your Honor.

11 THE COURT: Okay.

12 MR. BUTLER: Thank you. Your Honor, what I'd like to
13 do now, if I can is, with the Court's permission, is I'd like
14 to address some settlements that have been reached.

15 THE COURT: Okay.

16 MR. BUTLER: So those parties can do it. And then if
17 we can take a lunch break, Your Honor, that would be great.

18 THE COURT: Okay.

19 MR. BUTLER: So let me deal with the --

20 (Pause)

21 MR. BUTLER: Just one moment, please.

22 (Pause)

23 MR. BUTLER: Okay. Your Honor, the first one we want
24 to deal with is in the miscellaneous bucket and it deals with
25 the objections filed by various of the former plan investors at

1 dockets number 18345, 18347, 18348 18349, 18350, 18675, 18677
2 and 18678. These objections have been resolved based on an
3 agreement between General Motors Company and the plan investors
4 to language that we would be proposed to include as a new
5 paragraph in the plan modification order that we're working on.
6 And I'll read that section. It says "Nothing in this order,
7 the modified plan, the MDA documents, or any supporting papers
8 shall (i)foreclose or otherwise prejudice or impair any claims,
9 defenses, or positions that any plan investors (other than
10 Goldman Sachs) (the "Objecting Plan Investors") have or may
11 have in the adversary proceedings number 08-01232 and 08-01233
12 (the "Plan Investor Litigation"), including, without
13 limitation, any alleged right of setoff against any party
14 asserting claims against the objecting plan investors
15 (collectively, the "Potential Defenses"), or (ii)foreclose or
16 otherwise prejudice GM Co and GM buyers' rights to object to
17 any such potential defenses. This paragraph is not intended
18 to, nor shall it, create any liability in the part of Motors
19 Liquidation Company, GM Co., or the GM buyer with respect to
20 any counterclaims that the Objecting Plan Investors have
21 asserted or may assert in the Plan Investor Litigation against
22 any of the debtors."

23 The debtors agree that the inclusion of this language
24 is appropriate and this, along with my earlier comments on the
25 record at this hearing about not causing any prejudice in the

1 factual findings of this hearing and the adversary proceedings
2 resolves, we believe, all the objections.

3 MR. KURTZ: Good afternoon, Your Honor.

4 THE COURT: Good afternoon.

5 MR. KURTZ: Glenn Kurtz of White & Case on behalf of
6 ADHH and AMLP. I can confirm on behalf of each of the plan
7 investors, other than Goldman Sachs our consent to that
8 stipulation.

9 THE COURT: Did Goldman Sachs file an objection?

10 MR. KURTZ: They did not --

11 THE COURT: Okay.

12 MR. KURTZ: -- and they haven't been heard one way or
13 the other.

14 THE COURT: All right.

15 MR. KURTZ: And I just wanted to be sure that nobody
16 thought that we were authorized to represent anything.

17 THE COURT: Okay.

18 MR. KURTZ: I was not here unfortunately when Mr.
19 Butler confirmed the factual findings matter. We were
20 resolving this with GM. We had filed an objection. This was
21 the language that we had suggested. If there is no objection
22 after I read it then I'll sit. If there's not, perhaps I can
23 address it.

24 "No statement contained in any of Delphi's
25 declarations or testimony offered in support of the plan

1 confirmation shall be used for purposes of supporting or
2 establishing any fact in adversary proceedings 08-01232 and 08-
3 1233 and no finding made by the Court in support of the plan
4 confirmation shall be final, binding or conclusive or be given
5 any weight for purposes of the adversary proceeding. Nothing
6 in this order shall prejudice or waive the rights of any plan
7 investor to raise or assert any claims, defenses or positions
8 in the adversary proceeding." And again, I'll clarify --

9 THE COURT: He said that.

10 MR. KURTZ: Okay.

11 THE COURT: But that's fine. Okay.

12 MR. KURTZ: Thank you, Judge.

13 THE COURT: Now, I want to make sure I understand --
14 this is for Mr. Butler. The -- who acquires the litigation or
15 is it acquired? I know that some of the proceeds are clearly
16 allocated, what, up to 145 million, is that right?

17 MR. BUTLER: I just want to be very sure, Your Honor
18 --

19 THE COURT: All right.

20 MR. BUTLER: -- I say this correctly.

21 (Pause)

22 MR. BUTLER: I just want to be precise, Your Honor.
23 So Article 2.1.3 --

24 THE COURT: If you want to confirm that after --

25 MR. BUTLER: Yeah. I know. I just wanted to find it.

1 It is the GM buyer that obtains the right to any settlement
2 litigation in connection with the plan investor litigation.
3 And it set forth specifically in Article 2 of the MDA.

4 THE COURT: Okay. But then there's some -- isn't
5 there some amount that goes somewhere else?

6 UNIDENTIFIED SPEAKER: That was a relic, Your Honor,
7 of the --

8 THE COURT: Oh. All right.

9 UNIDENTIFIED SPEAKER: -- prior plan.

10 THE COURT: Very well. Okay.

11 MR. BUTLER: May I proceed, Your Honor?

12 THE COURT: Sure.

13 MR. BUTLER: Okay. The other settlements I wanted to
14 place on the record have to do with a sort of bucket number two
15 of objections dealing with the unions and some of the other
16 former employee objections. And I believe that, if I have this
17 correct, and hopefully counsel will confirm it for me, but I
18 believe that we have a resolution with the UAW, the IUE-CWA and
19 the USW. With respect to the UAW, the UAW -- I've been asked
20 to state on the record that the UAW CBAs are carved out of the
21 notice and cure procedures with the parties reserving their
22 rights to the extent of any issues. The -- General Motors
23 and -- who is assuming the UAW contracts and the UAW would
24 rather address those issues between themselves outside of this
25 process.

1 THE COURT: Okay.

2 MR. BUTLER: I got that right?

3 UNIDENTIFIED SPEAKER: Yes, you did.

4 THE COURT: Okay.

5 MR. BUTLER: That's all I need to say, right, on the
6 record?

7 UNIDENTIFIED SPEAKER: Excuse me?

8 MR. BUTLER: That's all I needed to say on the record,
9 right?

10 UNIDENTIFIED SPEAKER: Yes.

11 THE COURT: Okay.

12 MR. BUTLER: With respect, Your Honor, to the IUE-CWA
13 and the USW, I'm advised that those unions agree to withdraw
14 their objections at dockets number 18258, 17793 and 18370 and
15 have confirmed with the buyers that it will assume any -- with
16 the company buyer that it will assume any existing
17 pre-closing --

18 (Audio technical problem)

19 MR. BUTLER: It will assume any pre-closing
20 obligations under their collective bargaining agreements for,
21 among other things, grievances, accrued benefits including
22 vacation and sick pay, but excluding any obligations under
23 retained plans as that term is defined in Article 2.3.3 of the
24 MDA. And I'd like Mr. Lefkort on behalf -- or Mr. Abrams on
25 behalf of Willkie Farr to acknowledge that and Mr. Tanenbaum on

1 behalf of General Motors if Mr. Tanenbaum is here or Mr. Lemons
2 to acknowledge the fact. Well, Mr. Lemons is here. I just
3 need someone from both groups.

4 MR. LEFKORT: Maurice Lefkort, Willkie Farr &
5 Gallagher, Your Honor. I think Mr. Butler added, if I may have
6 the paper, some two extra words, "among other things". It was
7 for grievances and accrued benefits, not among other things.
8 But subject to that --

9 MR. BUTLER: Well, I'm sorry. You are assuming that
10 it's like the bargaining agreements, right?

11 MR. LEFKORT: We are assuming going forward the terms
12 and conditions and we have agreed with them that we will assume
13 the pre-closing grievances and accrued benefits but excluding
14 the retained plans.

15 MR. BUTLER: Right.

16 MR. LEFKORT: You added the words "among other
17 things". That was not part of our agreement with them.

18 MR. BUTLER: So the debtors are aware, is there
19 anything other than the retained plans that you're not assuming
20 under the CBAs?

21 MR. LEFKORT: We have expressly agreed to assume those
22 two categories of items. I am not aware of other items. It
23 doesn't mean that there aren't other items.

24 THE COURT: But if you assume the agreement --

25 MR. LEFKORT: This is my --

1 THE COURT: -- you assume it subject to all of its
2 obligations, right?

3 MR. LEFKORT: This is my understanding of the
4 settlement that we've reached with the unions. If that's not
5 acceptable to the unions, I'm happy to discuss it further.

6 THE COURT: Okay.

7 MR. BUTLER: I'm sorry. Let me get Mr. Lemons for GM.
8 Someone needs to speak for GM.

9 MR. LEMONS: GM was fine with the settlement that was
10 agreed to by company buyers and the IUE.

11 MR. BUTLER: Okay.

12 MR. LEMONS: You said Mr. Lefkort --

13 MR. BUTLER: Can you just say it on the record so they
14 can -- sorry. But I need the --

15 MR. LEMONS: Good afternoon. Robert Lemons from Weil
16 Gotshal & Manges on behalf of the General Motors buyers. GM
17 was fine with the language that Mr. Butler read as modified by
18 Mr. Lefkort.

19 MS. ROBBINS: Excuse me. Could you, for the benefit
20 of the other unions here, read that language again please?

21 MR. BUTLER: Sure.

22 MR. KENNEDY: I was just going to do that, Jack --

23 MR. BUTLER: Okay.

24 THE COURT: Okay.

25 MR. KENNEDY: -- since we wrote it. "The IUE-CWA and

1 USW agree to withdraw their objections, docket number 18258,
2 17793 and 18370, and have confirmed with Buyer that it will
3 assume any existing pre-closing obligations under their
4 collective bargaining agreements for grievances, accrued
5 benefits including vacation and sick pay, but excluding any
6 obligations under 'retained plans' as that term is defined in
7 Section 2.3.3 of the MDA."

8 MS. ROBBINS: 2.3.3?

9 MR. KENNEDY: Yes. 2.3.3. And we regard that as
10 being encompassing of the collective bargaining agreements with
11 the exception, of course, of the nonretained plans. And we
12 agree to it as written.

13 THE COURT: Okay.

14 MS. ROBBINS: I apologize. I heard both retained and
15 nonretained --

16 MR. BUTLER: Okay. Well, you know what? Ms. Robbins,
17 I'm happy to tell you off the record what it is --

18 MR. KURTZ: Well, I think if it's --

19 MR. BUTLER: Your union hasn't settled. And I'm happy
20 to do it with you off the record.

21 MS. ROBBINS: Mr. Butler, we're talking about the
22 record. And what I said is that I heard on the record both
23 retained and unretained plans. And I would think you would
24 want that clear on the record so that the agreement is clear.
25 I'm not talking about us. I'm talking about understanding

1 this.

2 MR. BUTLER: Judge, do you want us to read it again?

3 THE COURT: Well, does it say -- just the last part
4 about the plans.

5 MR. BUTLER: It says "but excluding any obligations
6 under 'retained plans' as that term is defined in Article
7 2.3.3. of the master disposition agreement."

8 THE COURT: Okay. That's what I heard, too, I
9 confess.

10 MR. BUTLER: Mr. Kennedy, will you also confirm that
11 -- I did not read the docket number for your supplemental
12 objection that was filed last evening under seal. Would you
13 indicate that's also withdrawn, please?

14 MR. KENNEDY: Yes, It is. It was our intent to
15 withdraw all of our pending objections.

16 THE COURT: Okay.

17 MR. KENNEDY: I just have one other thing I want to
18 add after Mr. Kolko speaks, Your Honor.

19 MR. KOLKO: Your Honor, Hanan Kolko of the firm Meyer
20 Suozzi English & Klein on behalf of the USW. And the agreement
21 that Mr. Kennedy and Mr. Butler both read is accurate and we
22 agree to it. Thank you.

23 THE COURT: Okay. Thank you.

24 MR. KENNEDY: Your Honor, just as a report to the
25 Court, as you know, we've had many sessions concerning the

1 post-retirement health obligations and the pension obligations
2 which have been involved both in this proceeding and others
3 that are payable to IUE-CWA represented employees. And,
4 obviously, there's been substantial changes in those benefits
5 because of the bankruptcy of General Motors. Just to report to
6 you that we are in discussions with General Motors about steps
7 to ameliorate the losses that have been sustained. We're
8 making progress on those but we have not yet completed doing
9 that. That's essentially in the context of the GM proceeding.

10 THE COURT: Okay. Thank you.

11 MS. CECCOTTI: Good afternoon, Your Honor. Babette
12 Ceccotti for the UAW. The UAW filed a limited objection and
13 reservation of rights at number 18279 on the docket. The
14 subject matter covered by the UAW's limited objection regarding
15 assumption of the UAW labor agreement, is addressed in proposed
16 plan modification order which, I believe, has been identified
17 as Joint Exhibits 9 and 11 in clean and blackline. I'm not
18 sure which form corresponds to those exhibit numbers. But in
19 any event, at paragraph 59 of Exhibits 9 and 11, as well as in
20 certain conforming revisions elsewhere in the order that either
21 have been made or are in progress. The subject matter of the
22 limited objection is also addressed by the statement that Mr.
23 Butler just placed on the record regarding the notice and cure
24 process.

25 Assuming that paragraph 59 and the conforming changes

1 are, in fact, included in the modification approval order
2 entered by the Court, and, frankly, we have one other language
3 issue that I'm told we can't finalize now but it's sufficiently
4 discreet for me to be able to stand at this time. But
5 assuming, I guess, the final form of that aspect of the order
6 is also resolved to our satisfaction and based on Mr. Butler's
7 representation regarding the notice and cure process, subject
8 to all of the foregoing, the UAW is prepared to withdraw its
9 limited objection and to waive to any extent a waiver is
10 required any UAW CBA restriction upon the sale.

11 I would like to just note that this statement is made
12 for the purpose of the current hearing that we're having which
13 is the plan modification hearing. And although I believe it is
14 clear from my statement if for any reason that motion is not
15 approved and the debtors commence a 363 hearing, we'd obviously
16 have to readjust these issues.

17 THE COURT: Okay. Very well. Thank you.

18 MS. CECCOTTI: Thank you.

19 MR. BUTLER: Your Honor, I think this would be an
20 appropriate time to take a lunch break if we could.

21 THE COURT: There's some movement behind you.

22 MR. BUTLER: Someone else may disagree with me.

23 (Pause)

24 MR. BUTLER: Mr. Kelly reminded me of a provision of
25 the master disposition agreement and some of the ancillary

1 agreements that might further inform Your Honor the exchange
2 that you had with Mr. Abrams about the relics and the plan
3 investor litigation of what goes where. Mr. Abrams'
4 statements, I think, were correct that there is no further
5 distribution of plan investor litigation to, if you will,
6 creditors of this estate, either pre-petition or post-petition.
7 But there is a sharing arrangement between the company buyer
8 and the GM buyer regarding that litigation.

9 THE COURT: Okay. That's what I was remembering.

10 MR. BUTLER: And so -- but it's not --

11 THE COURT: But the --

12 MR. BUTLER: It's not used --

13 THE COURT: But the GM buyer is, in effect, getting
14 assigned in a litigation.

15 MR. BUTLER: Correct.

16 THE COURT: Okay.

17 MR. BUTLER: It is, Your Honor. And there is a
18 sharing provision but it's not -- it's a sharing provision
19 between those entities.

20 THE COURT: Right. Okay.

21 MR. BUTLER: All right.

22 THE COURT: All right. So I'll come back in an hour,
23 3:15.

24 MR. BUTLER: Thank you, Judge.

25 THE COURT: Thank you.

1 (Recess from 2:10 p.m. until 3:22 p.m.)

2 THE COURT: Please be seated. Okay, we're back on the
3 record in Delphi Corporation.

4 MR. BUTLER: Good afternoon, Your Honor. Jack Butler
5 again for the debtors, for the continuation of our plan
6 modification hearing. Your Honor, prior to commencing this
7 next phase of the hearing to deal with remaining objections,
8 what I'd like to do is just do a little bit of checking to make
9 sure that I understand what's still at issue from objectors.
10 And our plan, Your Honor, would be to proceed in the following
11 order this afternoon after doing that. I would first bring on
12 for determination by Your Honor, pursuant to Article 7.17(c) of
13 the modified plan, approval of the Delphi-PBGC settlement
14 agreement. There are elements of the objections filed by the
15 three remaining unions that have not withdrawn their objections
16 that go to the PBGC settlement. In addition, there are --
17 Charles Cunningham and Dennis Block have filed an objection
18 along with the Delphi Salaried Retirees Association at docket
19 number 18277. DSRA has withdrawn that objection as it pertains
20 to the association, but it's still maintained by Mr. Block and
21 Mr. Cunningham. Mr. Block and Mr. Cunningham -- there is an
22 objection of fiduciary counselors at 18282, and there's an
23 objection of Mr. Paul Dobosz, D-O-B-O-S-Z, at docket number
24 18458, which raises certain jurisdictional matters, all of
25 which would go, I think, to the PBGC settlement. So in a

1 moment I'm going to ask whether counsel for those parties or
2 the parties themselves are prepared to press those objections
3 so I understand who's -- how we're going to be dealing with the
4 PBGC settlement.

5 Following the PBGC settlement motion, we would propose
6 to then take up the remaining objections of the unions, of the
7 three unions, that are not resolved and that don't go to the
8 PBGC settlement issues; followed by the objection of James
9 Sumpter, docket number 18366, as it relates to COBRA; followed
10 by the objections of Gary Cook and Cheryl Carter at dockets
11 number 18002 and 17951. And I think those are the only
12 objections that haven't otherwise been resolved.

13 So one of my questions is, and I'm going to ask about
14 these individuals as well, and these entities, but other than
15 ones I have just described, the three remaining unions, James
16 Sumpter, Mr. Black and Mr. Cunningham, fiduciary counsels
17 Mr. Dobosz, Mr. Cook, Ms. Carter, and of course subsumed within
18 this PBGC discussion will also be the letter objections filed
19 by the pensioners as well, but other than those, I'd ask if
20 anyone in the courtroom is planning to prosecute any objection
21 to the plan modification motion. If you are planning to do so,
22 would you please stand and identify yourself?

23 UNIDENTIFIED SPEAKER: Stand over there.

24 MR. BUTLER: Oh, yeah, excuse me. Thank you.

25 That would be -- there are a couple others, I'm sorry,

1 I should have mentioned. We've got to deal with American
2 Aikoku at docket number 18277 that we'll have to deal with.
3 And I think there's also -- let me just ask if there's anyone
4 else.

5 Yes?

6 MS. REED: We have a stipulation resolving an
7 objection put on the record with Ace Companies.

8 MR. BUTLER: With Ace, yeah. I understand that that's
9 resolved.

10 MS. REED : Correct.

11 MR. BUTLER: Right. Anyone else?

12 Okay. Then let me just quickly look through these
13 objections. I know that Ms. Mehlsack and Ms. Robbins are here
14 for the three unions and prepared to proceed.

15 Is Mr. Sumpter here and prepared to proceed with his
16 objection, or counsel for Mr. Sumpter here?

17 MR. SUMPTER: I'm on the phone call --

18 MR. BUTLER: Okay. Thank you, sir.

19 MR. SUMPTER: -- CourtCall.

20 MR. BUTLER: Thank you, sir. Is -- are Mr. Black and
21 Mr. Cunningham here and prepared to proceed with respect to
22 their objection of counsel?

23 UNIDENTIFIED SPEAKER: They are here and represented
24 by counsel.

25 MR. BUTLER: And counsel is, please?

1 UNIDENTIFIED SPEAKER: Morrison Cohen and Miller &
2 Chevalier.

3 MR. BUTLER: Thank you.

4 Fiduciary counselors, are you proceeding with your
5 objection?

6 UNIDENTIFIED SPEAKER: Yes.

7 MR. BUTLER: Thank you. And Mr. Dobosz, D-O-B-O-S-Z?
8 Mr. Dobosz or counsel for Mr. Dobosz present? Is Mr. Dobosz
9 present on CourtCall?

10 Your Honor, Mr. Dobosz's objection is summarized at
11 objection number 14 on the summary of objections by nature of
12 objection on page 7. And it's an assertion that the bankruptcy
13 court lacks jurisdiction, and phrasing it in his words, "to
14 direct or approve a sale or forfeiture of assets allegedly
15 belonging to the beneficiaries of a vested pension plan, and
16 the termination of a vested defined benefit pension plan is a
17 violation of ERISA". We filed our response to that, but if
18 Mr. Dobosz is not here and prepared to assert his objection,
19 I'd ask that it be overruled for lack of prosecution.

20 THE COURT: Well, it raises a jurisdictional point,
21 which I'll address, notwithstanding his not being present.
22 What you are asking me to approve is a settlement agreement
23 between the debtors and the PBGC. And, I believe, under
24 Section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, I
25 clearly have jurisdiction to consider the propriety of the

1 debtors' entry into that settlement agreement. This issue was
2 addressed -- this issue of conflicting jurisdiction allegedly
3 was addressed by the Seventh Circuit in In re UAL Corporation,
4 428 F.3d 677 at 681 (7th Cir. 2005) which reached the same
5 conclusion. So I would overrule that objection and find that I
6 have jurisdiction to consider the debtors' request for approval
7 of entry into the PBGC settlement agreement.

8 MR. BUTLER: Thank you, Your Honor. Your Honor, just
9 for efficiency and the record, I heard counsel for Ace indicate
10 they had a settlement they wanted to put on the record. I
11 don't want them to have to stay through a further contested
12 hearing if --

13 Are we ready for that?

14 THE COURT: Counsel for Ace?

15 UNIDENTIFIED SPEAKER: I'm sorry.

16 THE COURT: We're going to put your settlement on the
17 record.

18 MR. BUTLER: Are we ready for that? Is there --

19 UNIDENTIFIED SPEAKER: Shall I get Mr. Wharton?

20 MR. BUTLER: Yes, I think, if we're ready for it. I
21 didn't realize we were putting it on the record, but if we are,
22 that's fine.

23 While we're doing that, Your Honor, let me just try
24 and address a couple of other -- let me just address a couple
25 of other issues, Your Honor, while I'm waiting to do that.

1 Your Honor, there are a series of objections that
2 Toyota Motor Corporation and affiliates filed in connection
3 with the assignment of their contracts or dealing with them as
4 customers, at dockets number 18271, 18484, 18485 and 18486.
5 And I was asked to confirm on the record that, to the extent
6 they're not already resolved, those objections would be
7 adjourned to the August 17th hearing, subject to further
8 objection in accordance with the mechanisms that I've
9 previously placed on the record on how we're going to be
10 dealing with executory contracts.

11 THE COURT: Okay. All right, I think counsel for Ace
12 is behind you.

13 MR. BUTLER: So that takes care of Toyota.

14 MS. REED: Good afternoon, Your Honor. Margery Reed
15 with Duane Morris. I represent the ACE Companies. And I'm
16 pleased to report we do have a settlement as to our plan
17 objection. The settlement does preserve our objection to the
18 assignment of a ACE's policies and insurance agreements, which
19 will be heard at a later date.

20 In essence, Your Honor, the settlement preserves the
21 prior agreement with the debtors that the ACE Companies' claims
22 arising under their policies, both the assumed policies as well
23 as the post-petition policies and agreements, will flow through
24 as administrative expense claims that are allowed under the
25 modified plan and will be paid in the ordinary course either by

1 the debtors, the reorganized debtors or the buyers if the
2 policies and agreements are assigned to the buyers.

3 THE COURT: Okay.

4 MS. REED: There are some other provisions in the
5 stipulation, but that's the gist of it. And we are in
6 agreement on the wording and have signed off on it and will be
7 submitting it to chambers today for Your Honor to approve and
8 enter it as an order.

9 THE COURT: Okay.

10 Is that correct?

11 MS. REED: Thank you.

12 THE COURT: On the debtors' behalf, is that correct?

13 MR. BUTLER: Yes, Your Honor, subject to the terms of
14 the stipulation that have been agreed to --

15 THE COURT: All right.

16 MR. BUTLER: -- and as it will be submitted to
17 chambers.

18 THE COURT: Okay, that's fine. Thank you.

19 MS. REED: Thank you.

20 MR. BUTLER: Your Honor, that was docket number 18216,
21 the ACE matter.

22 THE COURT: Okay.

23 MR. BUTLER: I guess I'd also like to find out if
24 either Mr. Cook or Ms. Carter are here with respect to dockets
25 number 18002 or 17951.

1 Let me just briefly address that, Your Honor. One
2 moment, please.

3 THE COURT: Okay.

4 (Pause)

5 MR. BUTLER: Your Honor, these objections are
6 summarized -- no, not ACE, sorry. One second.

7 Not ACE. There they are.

8 Your Honor, they're described on page 30 of the
9 summary of objections that was provided to the Court
10 previously. This is -- Mr. Cook and Ms. Carter objected to the
11 treatment of individual workers' compensation claims asserted
12 in the amounts of 311,850 million, plus interest. Mr. Cook
13 argues his claim can't be modified under the modified plan
14 because it would violate a 2003 order issued by the Michigan
15 Department of Consumer Industry Services Bureau of the Workers'
16 Disability Compensation Board of Magistrates.

17 Our response, as we indicated, is that the plan does
18 not alter the debtors' injured employees' ability to seek
19 workers' compensation payments. Those workers who would timely
20 file the claim will be entitled to a distribution under the
21 modified plan in accordance with the priority scheme under
22 Section 507 of the Bankruptcy Code. To the extent that claim
23 has not already been paid following the petition date, pursuant
24 to the claims adjudication process, Your Honor's already
25 authorized in these cases. To the extent that an individual

1 claim was not timely filed, that workers' compensation claim is
2 already barred by the bar date order entered by this Court.

3 Your Honor has dealt with Ms. Carter's claims on prior
4 occasions. This is the latest, I guess, version of that claim.
5 But it's similar to the prior claims that had been dealt with
6 in the claims administration track.

7 And, Your Honor, as it relates to the plan
8 modification motion and hearing, we'd ask that Your Honor
9 overrule these objections.

10 THE COURT: All right, well, and the debtors are
11 representing that Mr. Cook's claim was dealt with in connection
12 with the thirty-fourth omnibus claim objection and is now --

13 MR. BUTLER: Yes, Your Honor.

14 THE COURT: -- now allowed at zero dollars?

15 MR. BUTLER: Right. Mr. Cook's claim -- both of these
16 have been dealt with in the past. Mr. Cook filed a proof of
17 claim at number 5408; it was modified in the debtors' thirty-
18 fourth omnibus claims objection from an unliquidated claim to a
19 general unsecured claim in the amount of zero. And
20 Ms. Carter's proof of claim, 17951, was objected to on the
21 thirty-fourth omnibus claims objection. She filed a response,
22 and the hearing on that objection has been adjourned under the
23 claims objection procedures authorized by this Court in the
24 earlier claims track procedures.

25 THE COURT: Okay. Well, again, I have serious

1 questions as to Mr. Cook's standing given the treatment of his
2 claim which was allowed at zero dollars. But to the extent he
3 does have standing, and with regard to Ms. Carter's objection,
4 I overrule those objections for the same reasons that, assuming
5 for the moment that the Michigan agency had a claim, I
6 overruled the Michigan agency's objections, which is that the
7 objections are premised upon payment in full of the claims as
8 opposed to treatment of the claims under the Bankruptcy Code's
9 priority scheme, which I believe the plan follows.

10 So those two objections are overruled.

11 MR. BUTLER: Thank you, Your Honor. Your Honor, I'd
12 like now, I think, to turn to the PBGC settlement and the
13 various objections that are either directly or indirectly
14 related to that settlement. The PBGC settlement has been filed
15 publicly in a series of public docket numbers and is also in
16 the trial exhibits. The actual Delphi-PBGC settlement
17 agreement was filed at docket number 18559; it's Joint Trial
18 Exhibit 131. It had two exhibits to it: One was a true-up
19 agreement that the PBGC agreement required be entered into to
20 true up some of the prior transfers between Delphi and General
21 Motors. That was filed at docket number 18682 and is Joint
22 Trial Exhibit 132A; that was Exhibit A to the Delphi-PBGC
23 settlement agreement. And Exhibit B to the Delphi-PBGC
24 settlement agreement is the settlement separate agreement
25 between -- it's called a waiver and release agreement -- that

1 has been entered into by General Motors Company, Motors
2 Liquidation Company and PBGC. Delphi's not a party to that.

3 We did condition moving forward with the settlement on
4 the public disclosure of that agreement as part of the
5 settlement proceeding. And it's set forth as Exhibit B. It
6 was filed as docket number 18657 and is Joint Trial Exhibit
7 132B.

8 As indicated, Your Honor, under our prior -- our plan
9 modification motion as supplemented, and pursuant to Article
10 7.17C of the modified plan, we are asking -- and the modified
11 plan constitutes our request to authorize and approve the
12 Delphi-PBGC settlement agreement pursuant to Section 1123(b)(3)
13 of the Bankruptcy Code and Bankruptcy Rule 9019.

14 Delphi and PBGC executed the settlement agreement on
15 July 21, 2009, and the debtors filed the notice of that filing
16 later that day. That included the Delphi-PBGC settlement
17 agreement. This agreement addresses the PBGC's claims in this
18 case, releases by PBGC needed to effectuate the master
19 disposition agreement and the potential involuntary termination
20 of the Delphi pension plans, including the Delphi HRP.

21 While the debtors were negotiating the original master
22 disposition agreement, which has now been designated the
23 alternative transaction, Delphi anticipated that GM would
24 address the Delphi HRP and believed that that meant that GM
25 would assume that obligation, although it understood that GM

1 was not expressly obligated to do so.

2 And I should emphasize on this record, Your Honor,
3 that the commitment that GM had undertaken to assume the second
4 transfer of the 4140, under the prior global settlement
5 agreement and master restructuring agreement Your Honor
6 approved last September, had a series of conditions in it.
7 Those conditions were not met when that -- based on events
8 subsequent that Your Honor's all too familiar with in terms of
9 what happened in the capital markets and in the automotive
10 sector, and the inability of Delphi to satisfy those
11 conditions.

12 So it is not the case that GM had a contractual
13 undertaking that they could be, if you will, forced to take the
14 second half of the 4140, although it was, at the time we made
15 our disclosures in late May/early June, at least the debtors'
16 understanding that that's what likely "addressed" meant. Your
17 Honor may recall, however, that you asked me those questions at
18 an earlier hearing back on June 10th when you approved the
19 supplement to the disclosure statement, and I was, I think,
20 candid with you that I did not know what "addressed" actually
21 meant. And we actually amended the supplement to say that we
22 didn't know what "addressed" actually meant but that we would
23 find out and we would disclose that.

24 But what was clear, what we meant in our earlier
25 disclosure, was that it was clear Delphi, the debtors, would

1 have absolutely no obligation for the HRP when the transaction
2 that was then contemplated, the June 1st transaction, was
3 complete. And we made it very clear in our announcements at
4 that time -- both the June 1st and again in the supplement that
5 Your Honor approved, and it was entered in the docket on June
6 16th and ultimately pursuant to which we re-solicited
7 acceptances, rejections of the modifications of the plan under
8 1127 -- that agreement and that disclosure made it clear that
9 this company, the debtors, had no financial wherewithal to be
10 able to continue to fund any of the defined benefit plans and
11 made it very clear that the company buyer had absolutely no
12 intention of assuming in any way, directly or indirectly, any
13 of the obligations associated with the defined benefit plans.
14 And it said that GM had no obligation to assume of the other
15 plans either -- although it would address the Delphi HRP.

16 When those -- as negotiations progressed -- and by the
17 way, there was one other, I think, not insignificant event,
18 which is, as we made those disclosures on or about June 1st,
19 General Motors -- the Old General Motors Corporation filed
20 Chapter 11. They eventually sold their assets to the New
21 General Motors Company, Motors Liquidation Corporation or
22 Company -- I guess it's Corporation -- remains a debtor here in
23 the Southern District, and is addressing various liabilities
24 that it had. And there's nothing with respect to the Delphi
25 HRP that in any way implicates General Motors Company, the new

1 entity, NewGM, and there was no obligation -- contractual
2 obligation with Delphi Corporation that Motors Liquidation
3 Company -- that would be enforceable against Motors Liquidation
4 Company as a result of Delphi's inability to meet the
5 conditions under the prior global settlement agreement and
6 master restructuring agreement.

7 Nonetheless, discussions ensued between Delphi and the
8 PBGC. And ultimately a separate path of discussions ensued
9 between General Motors -- the two General Motors entities and
10 PBGC about what the effects on these various companies might be
11 in the event that PBGC took action based on all of the public
12 statements that had been made by both companies, both by
13 Delphi, that we had no longer had the financial wherewithal to
14 support these plans, and by General Motors, both Motors
15 Liquidation and General Motors Company, that they did not
16 intend to effectuate any further transfers of these assets.

17 And it was as a result of those discussions, and why
18 they were bilateral and not trilateral, we believed it was
19 important and we appreciated GM's willingness to acquiesce to
20 our request that their agreements be disclosed immediately in
21 these cases. And we did so.

22 Once we learned of those events, the debtors made
23 additional public disclosure of that in a press release that
24 was released on July 21st of this year in which we announced,
25 among other things, that the U.S. hourly pension plan would not

1 be assumed by GM on the Delphi and PBGC-reached settlement on
2 the PBGC claims as they related to Delphi's estates.

3 We did not make -- we commented on what we believed
4 would ultimately be a settlement between GM and PBGC, and I
5 believe that GM issued a separate statement, but that agreement
6 wasn't completed until very recently and it was filed when it
7 was executed.

8 Your Honor, I think it is important, because I know
9 people have tried very hard to characterize this in ways that
10 the debtors believe are completely inappropriate, but Delphi,
11 in the discussions we had with PBGC, were very familiar with
12 the law, very familiar with In re UAL Corporation and the
13 decisions made in the Sixth Circuit with respect to these
14 matters, and approached these discussions at all time with an
15 understanding that PBGC would have to make its own independent
16 assessments of what it was going to do. And the PBGC
17 settlement agreement between Delphi only addresses what would
18 happen in the event that PBGC made those determinations.

19 Obviously, there is a statement in here that provides
20 in our agreement -- that provides that in the event this Court,
21 in connection with this hearing, made a determination, which we
22 believe Your Honor should make, that under the United decision,
23 among others, but particularly relying on United, that PBGC's
24 unilateral decision to proceed with an involuntary termination
25 of the Delphi HRP is not in any way an abrogation by Delphi of

1 any of its collective bargaining agreements and, therefore, are
2 prepared -- the Court is prepared to make the findings that
3 we've requested in the plan modification order to that effect.

4 There is our provisions of the PBGC-Delphi settlement
5 agreement that would take into account the steps to be taken
6 after that fact. Specifically, Your Honor, Section 3(B)(i) of
7 the Delphi-PBGC settlement agreement provides that if PBGC
8 decides to proceed with an involuntary termination of the
9 Delphi HRP, Delphi will consent to a termination and
10 trusteeship agreement, pursuant to Section 4042 of ERISA, only
11 if the Court finds that doing so does not violate either the
12 labor MOUs or the Court's orders approving the 1113/1114
13 settlement approval orders earlier in these cases.

14 To my knowledge, the only unions that are pursuing
15 objections now with respect to these matters are the three
16 remaining unions: the IAM IBEW and the IOUE.

17 Now, I'm sorry, I get the letters wrong when I say it.
18 I think I got to correct it.

19 Those three unions may have comments to this
20 agreement.

21 In addition, Your Honor, there are a series of other
22 parties including pensioners, who've written letters, who
23 objected to the settlement agreement. I believe the settlement
24 agreement and the benefits of the settlement agreement speak
25 for themselves. We put them in our papers and I'm prepared to

1 address them at length in any response to the objections. But
2 I think that's -- if it's all right with the Court, I think, is
3 a sufficient introduction to this matter. And I then would ask
4 any objectors to the settlement to raise their objections,
5 unless Your Honor has questions of me.

6 THE COURT: The form of voluntary termination and
7 trusteeship agreement --

8 MR. BUTLER: Yes?

9 THE COURT: -- that appears to me to be sort of a
10 standard form. Is there anything --

11 MR. BUTLER: Your Honor, you're speaking as to the
12 agreement for appointment --

13 THE COURT: This is Exhibit C?

14 MR. BUTLER: Right. Correct. It is very much --

15 THE COURT: It has blanks for the sponsors. This --

16 MR. BUTLER: Yes.

17 THE COURT: Could you give any background on the
18 origin of this form?

19 MR. BUTLER: Your Honor, this is, I believe, a
20 standard form that would be used in the event that --
21 Ms. Hassel's here with me in the court, who's actually spent
22 more time on it than I have. And I don't know if you want to
23 address the Court's point.

24 MS. HASSEL: Your Honor, Lonie Hassel, Groom Law
25 Group, for Delphi. This is a standard form that PBGC uses in

1 virtually all its terminations by agreement. The names are
2 changed, obviously; the dates change. But it's a very short
3 and simple document.

4 THE COURT: Okay. Thank you.

5 MR. BUTLER: So, Your Honor, in terms of introduction,
6 I think I will stop there, unless the Court has other questions
7 of me, and ask the objectors to present their objections.

8 THE COURT: Okay.

9 MS. MIEHLSACK: Good afternoon, Your Honor.

10 THE COURT: Good afternoon.

11 MS. MIEHLSACK: Barbara Miehl sack for the operating
12 engineers Locals 18S, 101S and 832S. And I'm here jointly with
13 Marianne Robbins who's representing the International
14 Brotherhood of Electrical Workers and the International
15 Association of Machinists and their district lodges and locals,
16 all collectively representatives of participants in the Delphi
17 HRP.

18 And we will be appearing jointly. We've divided up
19 the issues that we have. I will address, Your Honor, primarily
20 the settlement agreement and Exhibit B to the settlement
21 agreement and how it conflicts with the Employee Retirement
22 Income Security Act, and particularly Title IV of the Act. And
23 Ms. Robbins will address the issues that are raised by the
24 agreement on the plan in connection with the MOUs that were
25 entered into by the unions and approved of by Your Honor, as

1 well as the implementation agreement.

2 Your Honor, collectively the three unions represent a
3 sum total of 120 participants in the Delphi HRP. They are both
4 active employees, retirees and to-be retired employees. The
5 active employees actually are currently employees at the
6 Rochester facility, which is one of the UAW keep sites that
7 will be acquired by General Motors, and those employees will be
8 working side by side with UAW employees will be provided
9 substantially different benefits than the operating engineer
10 represented employees.

11 In addition, all of the participants of the HRP who
12 are represented by the three unions are the same individuals
13 who've been affected by General Motors' determination not to
14 provide post-retirement health insurance and life insurance
15 under the terms of the term sheets and implementation
16 agreements that Your Honor approved in this case.

17 MS. MEHLSACK: As a result, Your Honor, those
18 employees are suffering not just devastating cuts, likely
19 devastating cuts in their pension benefits, when the PBGC
20 terminates the plan, but in addition to that, substantial
21 reductions in their health insurance and their life insurance
22 and increases in the cost to them and their beneficiaries of
23 providing health insurance. As a result of what we -- we have
24 asked, Your Honor, both Delphi and the PBGC under Title IV of
25 ERISA which governs the -- which is the plan termination

1 provisions of ERISA, we've asked both Delphi and the PBGC to
2 provide us with information. The PBGC is obligated to provide
3 the administrative record of its termination decision and
4 Delphi is obligated to provide information that it provided the
5 PBGC in connection with the termination decision. Delphi was
6 very cooperative, and last night, provided us with a
7 substantial amount of information that we've not had a chance
8 to digest yet. The PBGC has fifteen days from the date of our
9 request to provide us with information. So that we don't know,
10 Your Honor, the extent to which a PBGC termination will reduce
11 nonguaranteed benefits. We are fairly certain, Your Honor,
12 that what's called the early retirement supplement in the plan
13 which persists until age sixty-two and results in, depending on
14 how many years of service the individual has, could result in
15 an individual maintaining a 3000 dollar a month benefit until
16 age sixty-two, and eligibility for Social Security. That
17 benefit will go so that putting the best face on it, Your
18 Honor, a participant who has had a substantial number of years
19 of service in the Delphi plan and is earning an average benefit
20 of about 1600 dollars a month will end up, because of the
21 changes to the GM healthcare plan, paying close to if not more
22 than fifty percent, as the retirement benefit goes down, the
23 likelihood that that participant will be paying more than fifty
24 percent of their annual retirement benefit out of pocket for
25 healthcare until GM picks up any costs. That's because the

1 healthcare benefit that is going to be provided by GM required
2 7000 dollars out of pocket for a family participant. So that
3 what we're looking at, Your Honor, is a devastating impact on
4 the 120 individuals who are represented by the three unions and
5 participants in the HRP.

6 You heard Mr. Kennedy say, earlier, that GM is in the
7 process of negotiating with the IUE to ameliorate the effects
8 of those two changes, the diminution in healthcare benefits and
9 the reduction in pension benefits that will come about as a
10 result of a termination. No one, Your Honor, is negotiating
11 with the three splinter unions: the IUOE, the IBW, and the
12 IAM. And Ms. Robbins will address the fundamental inequities
13 of the structure that's been proposed by the plan, the MDA, and
14 the settlement agreement and Exhibit B of the settlement
15 agreement in violation of what we believe were the promises of
16 equitable treatment to all participants in the HRP under the
17 MOUs.

18 What I'm going to address, Your Honor, is the fact
19 that we believe there are irreconcilable conflicts between the
20 settlement agreement and Exhibit B of the settlement agreement
21 and certain provisions of Title IV of ERISA, provisions that
22 were not addressed, Your Honor, by the United Airlines case
23 because they didn't, apparently, come into play in the United
24 Airlines case.

25 Mr. Butler said, interestingly enough, that Exhibit B

1 is not an agreement with Delphi. It's an agreement between the
2 PBGC and GM New -- both New and Old GM. However, Exhibit B
3 provides for releases from the PBGC to Delphi, the Delphi group
4 and to all of the purchasers, not just the GM purchasers. And
5 we believe those releases are simply irreconcilable with Title
6 IV. And with all due respect, Your Honor, we do not believe
7 that you can grant the relief that's requested by Delphi today,
8 because if you do, you will disturb what the district court
9 called in the flight attendants' case in United Airlines a
10 finely tuned balance that Title IV affects between the aim to
11 protect employees' benefits and the aim to preserve employer
12 assets. We don't think, Your Honor, that you can approve this
13 settlement without affecting that delicate balance in a way
14 that seriously undermines, if not totally impedes, the rights
15 of the unions and participants in the plan, and effectively the
16 rights of the PBGC under two provisions of Title IV. Those
17 provisions, Your Honor, are Section 13 -- it's Act Section 4003
18 29 U.S.C 1303 and Act Section 4047, it's 29 U.S.C. 1347.

19 Your Honor, the United Airlines case, United Airlines
20 said to the flight attendants that -- the Court said a
21 settlement between the PBGC and United Airlines didn't violate
22 the voluntary termination provisions of Title IV. Those are
23 the provisions of Title IV that require adherence to a
24 collective bargaining agreement. And what the Court said is
25 first of all, nothing in this agreement mandates that the PBGC

1 terminate the plan, and so there's no violation. And the
2 flight attendants had their rights under Section 1303
3 preserved. Section 1303 provides that a participant in the
4 plan or a union representing participants in a plan may sue the
5 PBGC for equitable relief if the participant is adversely
6 affected by conduct of the PBGC or if the union is represented
7 in connection with its collective bargaining rights as a result
8 of the adverse effect on the participants.

9 Your Honor, we believe that the plan itself, the MDA
10 that provides that Delphi will have no obligation after the
11 closing, no obligation whatsoever in connection with the
12 plan -- not just no funding obligation but no obligation -- in
13 combination with the settlement agreement which implements,
14 which is, as Mr. Butler has acknowledged, as everybody has
15 acknowledged, once GM refused to accept responsibility for the
16 Delphi HRP, the implementing mechanism for relieving Delphi of
17 the responsibility is the agreement with the PBGC and the, we
18 believe, also, especially important are the waiver and release
19 provisions contained in Exhibit B, even though Mr. Butler says
20 Delphi's not a party to Exhibit B. We --

21 THE COURT: How does any of this violate 1303?

22 MS. MEHLSACK: Under 1303, Your Honor, you can get
23 equitable relief, the kind of --

24 THE COURT: As against the PBGC?

25 MS. MEHLSACK: As against the PBGC, the kind of

1 equitable relief, for example, is the right to have the PBGC to
2 restore a plan.

3 THE COURT: Okay, but how does this violate 1303?

4 MS. MEHLSACK: The settlement provides that the PBGC
5 releases Delphi from any obligation founded on any conceivable
6 theory, legal or equitable. What the effect of this would be,
7 Your Honor, is if we had a basis for going in and saying to the
8 PBGC you have to restore this plan, arguably Delphi can turn
9 around and say PBGC, you can't restore this plan and you can't
10 restore the plan because the settlement agreement, the waiver
11 and release provision specifically says you may not -- you may
12 not on any legal or equitable theory, impose any kind of
13 liability on Delphi for this plan.

14 THE COURT: The Second Circuit in Revco said that the
15 bankruptcy court reviews the settlement agreement from the
16 perspective of the debtor and its creditors, not from the
17 perspective of the other party and its creditors. So why do I
18 even look at the PBGC?

19 MS. MEHLSACK: Because the debtor is here asking you,
20 Your Honor, to approve an agreement that effectively -- why is
21 the debtor asking you to approve this agreement?

22 THE COURT: Because it's a good deal for the debtor.
23 That's why they're asking me. That's what they're telling me,
24 and that's what the Second Circuit and the Revco matter
25 involving the settlement with Sphinx said I should look at and

1 nothing else.

2 MS. MEHLSACK: But the -- but Your Honor --

3 THE COURT: To determine whether it is a good
4 agreement or not to the debtor.

5 MS. MEHLSACK: -- this is a proposal that impedes --
6 the Court also said in UAL that looking -- you need to look at
7 ERISA, as well. The bankruptcy at Code does not supersede
8 Title IV of ERISA. And in fact --

9 THE COURT: Does anything in this agreement do that?

10 MS. MEHLSACK: Yes, Your Honor, it supersedes Section
11 4047. What the United Court said was there's nothing wrong
12 with this agreement because the PBGC under 4067 has the right
13 to give up claims, pre-termination claims against the debtor.
14 There's absolutely nothing in 4047 that gives the PBGC the
15 right to waive its right to restore a plan.

16 THE COURT: But I'm not authorizing the PBGC to enter
17 into this agreement. The PBGC is already entered into it. I'm
18 authorizing the debtor to enter into it and perform this
19 agreement.

20 MS. MEHLSACK: But you're giving this agreement your
21 imprimatur, Your Honor, the bankruptcy court's imprimatur.

22 THE COURT: As far as the law permits, which is,
23 again, from the debtors' perspective.

24 MS. MEHLSACK: Your Honor, what we believe is you
25 can't approve the other terms of this agreement. If Delphi is

1 prepared to go ahead with this transaction and GM is prepared
2 to go ahead with this transaction, without your approval for
3 those released in Exhibit B, then that's a decision that the
4 debtor has to make. But what we're saying, Your Honor, is the
5 debtor has chosen to present that -- put that agreement before
6 you and is asking for your approval of the agreement. We don't
7 think you can approve the agreement without creating a
8 structure that violates Title IV. If you're saying I don't
9 have to approve that agreement and Delphi and GM are prepared
10 to go ahead with these transactions without that agreement,
11 then we're in a different transaction, Your Honor. Our concern
12 --

13 THE COURT: How does this agreement violate 1347?

14 MS. MEHLSACK: If you look at Exhibit B, Your Honor,
15 to the settlement agreement at page 5, it says "release of
16 claims relating to pension plan termination" and it provides
17 the Delphi releasees, GMC, Old GM, all of the purchasers, and
18 going on, it's at subsection B, if you read down to the bottom,
19 toward the bottom of the page, "from any and all disputes,
20 controversies, suits, actions, judgments, liabilities,
21 obligations of any kind whatsoever upon any legal or equitable
22 theory, whether known or unknown that PBGC ever had, now has,
23 or hereafter can, shall, or may have from the beginning of
24 time, by reason of any matter, cause, or thing, whatever
25 relating to all pension plans that have terminated". What

1 effectively this does, Your Honor, is -- and let me back up
2 because the Second Circuit --

3 THE COURT: So this is a release by the PBGC --

4 MS. MEHLSACK: To Delphi.

5 THE COURT: -- of those parties.

6 MS. MEHLSACK: That's right.

7 THE COURT: Okay.

8 MS. MEHLSACK: And what it says is, we, the PBGC,
9 can't come in and say to you, Delphi, we're going to restore
10 your plans. And it means that we, the unions -- in effect, it
11 does what United said -- what the Court in United said that
12 agreement didn't do. It does mandate the PBGC to maintain the
13 plan as a terminated plan even though the PBGC might find that
14 there were reasons to restore the plan. And what it also does,
15 Your Honor, the Second Circuit, when it was considering the LTV
16 settlement found that the -- and this is PBGC v. LTV, 824 F.2nd
17 197, and the Court was considering the due process rights of
18 the participants and it made three points. It said first of
19 all, the participants -- as to why the termination in LTV did
20 not violate the rights of the participants. It said the
21 participants are free to make -- file claims against LTV for
22 not continuing the plan. It's the position of the debtor that
23 we are not free to file claims against Delphi for their not
24 continuing the plan.

25 THE COURT: Delphi or -- I'm sorry.

1 MS. MEHLSACK: The Second Circuit said the
2 participants are free to file claims against LTV for not
3 continuing the plan.

4 THE COURT: Okay, right.

5 MS. MEHLSACK: The participants have their rights,
6 under a 1303 action, that was the second point. And the third
7 point was the PBGC can always restore the plan under 4047. We
8 don't have any of those protections, Your Honor. It's the
9 position of Delphi we have no right to claims against Delphi
10 for not continuing the plan. It's their position under -- and
11 that's something we will be addressing in the claims
12 disallowance. It's their position that under United
13 Engineering, the Sixth Circuit case, once the plan is taken
14 over by the PBGC, we don't have any right to claim against
15 Delphi.

16 THE COURT: But I'm not deciding that today, right?

17 MS. MEHLSACK: No, I understand that, Your Honor.
18 That's one of the provisions. The second and third issue --

19 THE COURT: And if I do decide it, it will be based
20 under applicable law as to whether you have a claim or not.

21 MS. MEHLSACK: But the second and third provisions,
22 what I'm saying, Your Honor, is none of the --

23 THE COURT: Well, let me -- Mr. Butler, does this
24 release by the PBGC and the order you're asking me to enter
25 give the PBGC immunity under 1303?

1 MR. BUTLER: Not to my knowledge, Your Honor. The --
2 first of all, we're not asking Your Honor to approve Exhibit B.
3 We insisted that it be disclosed. We're asking Your Honor only
4 to approve the Delphi-PBGC agreement. There are benefits in
5 the General Motors-PBGC agreement that are newer to Delphi
6 because of payments that General Motors is making. But that
7 agreement is an agreement between GM, General Motors Company,
8 Motors Acquisition Corporation, and PBGC that's effective in
9 accordance with its terms. We're a beneficiary of some of the
10 releases there, but that's not before the Court today. All
11 that's before the Court today that we're asking you to approve
12 is the Delphi-PBGC agreement. That was very clear in our
13 motions.

14 THE COURT: Okay.

15 MS. MEHLSACK: Your Honor, the Exhibit B is an exhibit
16 to the settlement agreement. It's an exhibit in the documents
17 that are before the Court today. There's been absolutely no
18 indication, and to the contrary, every indication what's being
19 sought today is an approval of Exhibit B. If the debtor is
20 withdrawing Exhibit to the settlement agreement from its
21 motion, then that puts this case in a somewhat different
22 posture. It doesn't end the issue, but if Mr. Butler is saying
23 we're withdrawing Exhibit B, Your Honor.

24 THE COURT: No, I don't understand, still, how the
25 order that the debtors are asking me to enter would give the

1 PBGC a free pass under Section 1303.

2 MS. MEHLSACK: What it does, Your Honor --

3 THE COURT: I don't see -- I mean, I don't quite see
4 how I would have jurisdiction to do that anyway.

5 MS. MEHLSACK: Well, Your Honor, we don't think you
6 have -- let me -- we don't think you have jurisdiction to
7 decide -- 1313 --

8 THE COURT: Well, let me ask you a different question.
9 Where, in the relief they're seeking, do you believe that that
10 relief is included?

11 MS. MEHLSACK: Well, let me ex -- Your Honor, what we
12 believe is included is the fact that these releases, first of
13 all, would prevent the PBGC from proceeding under 1347 to
14 restore the Delphi plan because the PBGC is precluded from
15 proceeding on any legal or equitable basis against Delphi in
16 connection with this plan.

17 THE COURT: Let's focus -- let's get to the real
18 world, now, on this. I mean, where the PBGC has restored plan
19 is where there's a follow-on plan. I mean, where the debtor is
20 playing fast and loose with the shifting obligations under the
21 PBGC and then turning around and immediately entering into a
22 new plan. This debtor's not even going to have any employees.
23 They're going to be contract people. So what are we talking
24 about, here?

25 MS. MEHLSACK: Your Honor, we believe that there are

1 the equivalent -- and this goes to the issues that are raised
2 by another provision of this agreement which references the
3 benefit guarantee and other contractual arrangements that are
4 being discussed. We believe, Your Honor, and we know that the
5 consideration of benefit guaranty -- the PBGC considers a
6 benefit guaranty to be a follow-on plan. And there are issues
7 that are raised by this agreement, raised by the negotiations
8 that are going on today, Your Honor, that effectively deny to
9 our clients the benefits of what are being called the top-ups,
10 what other people have called follow-on plans. And
11 effectively, that would be -- you're absolutely right, Your
12 Honor -- that would be one basis upon which conceivably there
13 would be an action for restoration of the plan.

14 The other is, Your Honor, we don't know yet --

15 THE COURT: But with the debtors as the sponsor?

16 MS. MEHLSACK: Well, Your Honor, that -- this is a
17 very intricate transaction, Your Honor, and what the debtor has
18 done is present agreements to you that tie in and place before
19 you all of these transactions as one, you know, they're all
20 here, Your Honor, as exhibits, they're part of what the debtor
21 is asking you to approve.

22 THE COURT: Can I interrupt you for a second?

23 MS. MEHLSACK: Sorry?

24 THE COURT: Can I interrupt you just for a second?

25 (Pause)

1 MR. BUTLER: Judge, while there's that brief
2 interruption, could I just simply rise to point out one thing,
3 and that is -- because maybe this will help with the argument
4 and Ms. Mehlsack can focus on what we propose. The proposed
5 order that we filed with this Court, Your Honor, has, as it
6 relates to the PBGC settlement agreement which is paragraph 56
7 (a) and (b) in the order we filed to you attached to our reply.
8 And it's paragraph 58 (a) and (b) in connection with the
9 modified order that we -- that's a trial exhibit. We say very
10 clearly that we're asking the Court to find quote, and this is
11 56(b) of what was filed with the omnibus replay, quote, "the
12 Court finds that the debtors may enter into such agreements
13 with respect to the Delphi HRP or the bargaining plan as
14 defined in the Delphi-PBGC settlement agreement without
15 violating the labor MOUs or other applicable collective
16 bargaining units, the union 1113, 1114 approval orders, Section
17 1113(f) of the Code or any other applicable law, and the Court
18 expressly authorizes the debtors to do so. Nothing in this
19 order prohibits employees or unions adversely affected by any
20 plan termination from (a) seeking to intervene in any district
21 court action filed by PBGC under Section 4042 of ERISA at 29
22 U.S.C. Section 1342 to terminate the plans or (b) pursuing any
23 independent action against the PBGC regarding the termination
24 of the plan under Section 4003(f) of ERISA, 29 U.S.C. 1303(f)"
25 end quote. Those rights are specifically preserved under the

1 proposed modification plan order.

2 MS. MEHLSACK: Your Honor, that's not, I believe,
3 responsive to what we are saying. I know that --

4 THE COURT: Well, it's certainly responsive on the
5 1303 point.

6 MS. MEHLSACK: No, it's responsive to our right to go
7 and ask for relief under 1313. It's not responsive to the
8 issue that Exhibit B effectively cripples the ability of the
9 PBGC to seek relief or to respond to a claim for equitable
10 relief.

11 THE COURT: Well, what is the PBGC? They're a potted
12 plant? I mean, come on, they have the right to settle under
13 1367.

14 MS. MEHLSACK: But this is not 3067, Your Honor. 3067
15 is very limited.

16 THE COURT: They can't give a release?

17 MS. MEHLSACK: 3067 does not talk about equitable
18 relief. 3047 is very specific and 3067 reads very differently
19 than 3047. 3047 says whenever the corporation determines that
20 a plan which is to be terminated or which is in the process of
21 being terminated should not be terminated as a result of such
22 circumstances as the corporation determines to be relevant, the
23 corporation is authorized to cease any activities undertaken to
24 terminate the plan --

25 THE COURT: No, you misheard me. I'm saying 29 U.S.C.

1 1367 which gives the PBGC the authority to settle.

2 MS. MEHLSACK: But not to settle 3040 -- not to settle
3 the right to restore a plan, Your Honor. Because 1367 only
4 talks about pre-termination liabilities. 1367 says, it's
5 titled recovery of liability for plan termination. The
6 corporation is authorized --

7 THE COURT: What language in Exhibit B is raising this
8 restoration issue with you?

9 MS. MEHLSACK: The language that says the PBGC is
10 precluded from seeking any kind of equitable relief against
11 Delphi. It's, again, at -- that's the settlement -- on page 5,
12 section 2(b), the PBGC -- the relief of claims relating to
13 pension plan terminations which precludes the PBGC from
14 asserting any and all disputes, controversies -- if you go
15 down, Your Honor, it's about, sort of, almost -- a little bit
16 more than halfway. It says "the PBGC" -- it starts out "the
17 PBGC unconditionally and forever releases and discharges (1)
18 the Delphi group, (2) the sales companies, the JV companies,
19 GMC, Old GM, and all other purchasers or transferees of assets
20 pursuant to the MDA" and then it goes on together "in each
21 case" -- go down about ten lines -- "from any and all disputes,
22 controversies" -- I won't read of all shows and action --
23 "liens and obligations" --

24 THE COURT: This is the release in the agreement
25 between, again, between PBGC and GM, right?

1 MS. MEHLSACK: But it's a release to Delphi, Your
2 Honor.

3 THE COURT: Right, okay.

4 MS. MEHLSACK: And it says for -- "upon any legal or
5 equitable theory".

6 THE COURT: Okay.

7 MS. MEHLSACK: Your Honor, right now, it's my under --
8 first of all, the PBGC has issued a notice of termination
9 already. If the -- were Your Honor to find that what the
10 PBGC's agreement with Delphi violates our MOUs or Your Honor
11 were to not find that it doesn't violate the MOUs, then the
12 settlement agreement provides that the PBGC must go in and seek
13 termination in the district court. That, by the way, we think,
14 Your Honor, makes this mandatory in a way that the United
15 termination wasn't mandatory. But it also means, Your Honor,
16 we believe, that were we to challenge that termination, and the
17 PBGC notice of termination provides that it's one of the bases
18 for the termination is that the plan liabilities are likely to
19 increase unreasonably, were we to challenge that termination,
20 okay, arguably, the PBGC, okay, is saying we don't have the
21 right -- we have released Delphi from any obligations under
22 this agreement. And we don't have the right to go back in and
23 say Delphi, we're going to restore the plan. Our calculations
24 are wrong. Or for any other kind of equitable relief.

25 THE COURT: And what court has put its imprimatur on

1 that position?

2 MS. MEHLSACK: I think, Your Honor, by approving this
3 settlement agreement with Exhibit B, that you're putting an
4 imprimatur on the PBGC saying we don't have the right, any
5 more, to seek any kind of equitable relief against Delphi.

6 THE COURT: Okay.

7 MS. MEHLSACK: Your Honor, we also believe that the --
8 and Ms. Robbins will address the equities of the structure and
9 its implications for the MOUs. We believe that by foreclosing
10 the PBGC from seeking equitable remedies against Delphi, GM --
11 Your Honor raised the question of follow-up plans. Arguably
12 this -- Exhibit B certainly forecloses the PBGC from seeking
13 any kind of legal or equitable remedies from GM. In other
14 words, GM -- the former sponsor of the Delphi HRP, knew --

15 THE COURT: We're going -- I mean, as long as you
16 believe that the only basis for your argument is that I am
17 blessing the PBGC's actions instead of the debtors' actions if
18 I grant this motion, then you don't need to go further.

19 MS. MEHLSACK: Well, I think you're blessing both,
20 Your Honor. You're also --

21 THE COURT: I'm not. It's that simple, I'm not. The
22 Second Circuit said so in 2007.

23 MS. MEHLSACK: Your Honor, Ms. Robbins will address
24 the issues of the debtors' conduct in connection with the
25 collective bargaining agreement. But we believe, Your Honor,

1 that the debtor has mandated that, unlike in the United case,
2 the agreement here effectively operates as a mandate on the
3 PBGC. Thank you, Your Honor.

4 THE COURT: Well, how is that?

5 MS. MEHLSACK: Because it says to the PBGC you can't
6 go in and do anything else but terminate this plan. If --

7 THE COURT: But where does it say that?

8 MS. MEHLSACK: It says -- Your Honor, first of all it
9 says if Your Honor doesn't find that our agreements are not
10 violated, it says the PBGC has to go to the District Court.

11 THE COURT: No, no, no. Let's read the provision, all
12 right? Because that's obviously important. It's 3(b) of the
13 agreement.

14 MS. MEHLSACK: Now we're talking about the settlement
15 agreement?

16 THE COURT: Right. It says, "As soon as is reasonably
17 practical after entry of an order approving the modified plan
18 or a sale transaction at the alternative sale hearing, PBGC
19 staff will determine whether to initiate and/or proceed with
20 the involuntary termination under 29 U.S.C. Section 1342 of the
21 bargaining plan and/or the hourly plan, which termination shall
22 be effective on the termination date. If and when PBGC issues
23 a notice of determination pursuant to 29 U.S.C. Section 1342
24 that the bargaining plan and/or the hourly plan shall terminate
25 on the termination date, PBGC shall seek termination of the

1 bargaining plan and/or the hourly plan pursuant to 29 U.S.C.
2 Section 1342(c)", which sort of makes sense since they've made
3 the determination at that point.

4 Then it says -- and I think this is the language
5 you've been referring to, "In connection with seeking
6 bankruptcy court approval of the agreement as contemplated
7 under Section 6(a) hereof, Delphi shall seek a finding by the
8 bankruptcy court that such termination, if and when determined
9 by the PBGC, is not in violation of the labor MOUs, the union
10 1113, 1114 settlement approval orders, or the local agreements.
11 In the event that the bankruptcy court approves this agreement
12 and makes the foregoing finding PBGC and Delphi shall execute
13 it."

14 So it's all conditioned upon the PBGC staff making the
15 determination and then the PBGC taking the action consistent
16 with the determination.

17 MS. MEHLSACK: Your Honor, I actually was referring --
18 that termination -- I believe that such termination is a
19 termination in which the PBGC seeks the consent of the debtor.
20 That's the notice that's attached to the settlement agreement
21 and the PBGC has already actually issued that notice to
22 Delphi --

23 THE COURT: Okay.

24 MS. MEHLSACK: -- in which Delphi signs on to a
25 voluntary trusteeship and agrees to the appointment of the

1 PBGC --

2 THE COURT: Right.

3 MS. MEHLSACK: -- as the trustee without the PBGC
4 having -- and the PBGC has no requirement to go into the
5 District Court. In fact, that was the -- I believe it was LTV
6 where the Court said there is absolutely no need for the PBGC
7 to seek any kind of relief in the District Court.

8 THE COURT: If there's an agreement with --

9 MS. MEHLSACK: If there's an agreement. But then the
10 next provision says that if Your Honor doesn't make that
11 ruling, then the PBGC has to go into the District Court and
12 get --

13 THE COURT: If they've decided to do it.

14 MS. MEHLSACK: But then, Your Honor, going back to --
15 they, in effect, are then required to -- they have no option to
16 seek to restore that plan or do anything else other than to
17 continue to seek the termination. And in that sense, Your
18 Honor, we believe that it's mandatory in a way that the UAL
19 agreement was not mandatory. We think that that's a
20 distinction with a difference. But we believe that far more
21 important are the restrictions on 4047 and 1303, in terms of
22 the conflict with Title IV.

23 THE COURT: Okay.

24 MS. MEHLSACK: Thank you, Your Honor.

25 THE COURT: Okay.

1 MS. ROBBINS: Good afternoon, Your Honor. I am not
2 going to talk on the ERISA action, but let me just start out by
3 pointing out to the Court the documents that you have in your
4 exhibit binders that relate to our agreements with Delphi that
5 we believe are violated by this plan of reorganization.

6 And most specifically -- certainly it's not the only
7 issue but it's so central that I will be talking about both the
8 plan and the PBGC agreement because for our issues they are so
9 intertwined. Those exhibit numbers are 122 for the MOUs that
10 were entered into in July and August of 2007, and the
11 implementation agreement for our three unions is found at
12 Exhibit number 126.

13 As Ms. Mehlsack has indicated, the reason that we're
14 here is that our unions have members who worked for a very long
15 time for General Motors and then continued on the spin-off that
16 was Delphi from about 1999 until this bankruptcy proceeding.
17 And in the case of the members that my client represents, those
18 workers worked during the bankruptcy and negotiated these
19 closure agreements and lost their job sometime by January of
20 2008. They had negotiated at that time -- as had
21 Ms. Mehlsack's client's represented employees -- agreements
22 which gave up a lot of their employment security but at least
23 provided some security for these long term workers in
24 retirement.

25 And that is particularly true for early retirees who

1 now find themselves with no employment and in a market where
2 it's very hard to get employment. As she mentioned, these
3 workers have already lost eighty-five percent of the OPEB
4 benefit that was provided by these agreements. That OPEB
5 responsibility was transferred to General Motors, and New
6 General Motors has only provided such a minimal benefit that I
7 think it was costed at about fifteen percent of what a full
8 health benefit would be.

9 Now we're faced in a situation where those same
10 workers will find that their pension benefit is cut in half,
11 these early retirees who are not yet sixty-two, because there's
12 a supplement that's not guaranteed by the Pension Benefit
13 Guaranty Corporation.

14 THE COURT: And that's for people who retire between
15 the age of fifty and sixty-two? Is that --

16 MS. ROBBINS: Yes. Yes.

17 THE COURT: Okay.

18 MS. ROBBINS: And of course, most of our clients had
19 no choice in that matter. In a better economy they may have
20 had more choices, but at the present time if you're an older
21 person you're the first one gone if you ever find that job.
22 In any case, we find that they're stripped twice of their
23 health benefits and their pension benefits if this
24 reorganization goes through. I'm just explaining to you why
25 we're here and why this is so important.

1 In terms of what our agreements provide, if you look
2 at Exhibit 122, d(2) of each of these agreements, you will see
3 that there is --

4 THE COURT: Could you give me those -- 122 and 126?

5 MS. ROBBINS: It's in the same binder.

6 THE COURT: The fellow behind you is going to do it.

7 (Pause)

8 THE COURT: Thanks. Okay, you can go ahead.

9 MS. ROBBINS: For the IBEW agreement, I'm looking --
10 unfortunately they're just all sort of put together.

11 THE COURT: I have it.

12 MS. ROBBINS: I'm looking at page 7 of 32, and it's
13 probably --

14 THE COURT: I have it.

15 MS. ROBBINS: -- ranked page in each of the
16 agreements.

17 THE COURT: Right.

18 MS. ROBBINS: And what you see in item number 1 is
19 that participants will be eligible for all benefits, including
20 but not limited to all applicable supplements. And it
21 basically says that those benefits are as of the date
22 immediately preceding the effective date. The applicable
23 supplements are mentioned again and again, as are a number of
24 specific benefits that were of concern, given the potential
25 shutdown. So there is no question that pension benefits were a

1 central part of these agreements.

2 Now, initially, I think, there was some suggestion
3 that somehow we might have released our claims for these
4 agreements, but it's very clear that the release in Section E,
5 I believe, specifically excludes vested pension benefits. And
6 the final release is very clear that benefits that are
7 explicitly provided for, explicitly not waived, are not
8 released. So these unions have pension benefits, not just what
9 PBGC might have by statute guaranteed, but they have all of
10 their pension benefits as they existed right before the
11 effective date, and that includes the supplements that are not
12 guaranteed by PBGC.

13 Now, what Delphi is saying is, "In direct
14 contradiction to the MOUs, we just want to ignore those
15 benefits that we promised to provide you." And one of the
16 things that Delphi says is "Well, you know, we didn't assume
17 those agreements." And that was one of the arguments raised in
18 their response brief.

19 And they cite to (f)(4). What they don't indicate to
20 the Court is that in (f)(3) the parties agreed that "the order
21 of the bankruptcy court approving this agreement shall provide
22 that any plan of reorganization consistent with this agreement
23 and any confirmation order entered into and with respect to
24 such plan shall include the following provisions." And the
25 last one is this agreement, "And the agreements referenced in

1 Attachment A shall be assumed under 11 U.S.C. Section 365."

2 So this was an agreement that does provide for
3 assumption of our agreements, although it happens at the time
4 of the plan. And the plan is to be consistent with these
5 agreements. And if the plan is not consistent with these
6 agreements, then at that point there would have to be an 1113
7 proceeding. A unilateral change of these agreements would be
8 in direct violation of 1113(f) which says you cannot alter
9 terms of a collective bargaining agreement without going
10 through 1113(f).

11 Now, Delphi's next position is "Well, we said in a
12 provision that we could seek a termination of the plan in
13 accordance with applicable law." But the applicable law, 29
14 U.S.C. Section 1341(a)(3), says that they cannot terminate a
15 plan that violates a collective bargaining agreement. And as
16 we've seen, this collective bargaining agreement provides for
17 these pension benefits.

18 So then the debtors say, "Well, there's some language
19 in the transformation agreement with GM that mentions that this
20 is only between the parties and it doesn't bind third parties
21 one way or the other", but that certainly doesn't mean that an
22 agreement that terminates these benefits violates this
23 agreement. It has nothing to do with that. It has to do with
24 rights outside this agreement. This agreement says we have our
25 pension benefits. And that's not what's happening, Your Honor.

1 They're being cut in half at the best.

2 THE COURT: Well, Delphi says it's not seeking
3 termination and that the PBGC is, under 1342.

4 MS. ROBBINS: Delphi has entered an agreement that
5 says the PBGC has to do this.

6 THE COURT: We've already been through that.

7 MS. ROBBINS: Yes.

8 THE COURT: You're not going to win on that one.

9 MS. ROBBINS: Well, I have to watch it in the sense
10 that I do -- I will say one thing about that issue, only in
11 response to a question about Mr. Butler's comment about well,
12 this doesn't involve Exhibit B, this just involves the other
13 parts of the agreement. That PBGC agreement is very clear that
14 it is completely nonseverable. Every piece relates to
15 everything else.

16 THE COURT: I'm not particularly bothered by
17 Exhibit B. I mean, I --

18 MS. ROBBINS: Well, all I'm saying is you can't --
19 whether you're bothered about it or not, I know the Court will
20 make a determination. What I'm saying is it can't be approved
21 on the basis that you look at only half the agreement --

22 THE COURT: I'm looking at the whole thing.

23 MS. ROBBINS: -- because it involves the whole thing.
24 And by its terms, it involves the whole item.

25 THE COURT: But I think Delphi's argument is first,

1 PBGC is doing this under 1342, and we know from the LTV case
2 that it can. And secondly, that, you know, the union
3 acknowledged there was a possibility that it could be
4 terminated. I think that --

5 MS. ROBBINS: It doesn't mean it doesn't violate this
6 agreement.

7 THE COURT: I think that the second point is sort of a
8 gravy argument that they're making. The first one is that this
9 is being done under 1342, not by Delphi but by the PBGC.

10 MS. ROBBINS: It still violates what they have
11 committed to these unions.

12 THE COURT: How does it do that?

13 MS. ROBBINS: Because they promised us pension
14 benefits we're not going to get.

15 THE COURT: But if --

16 MS. ROBBINS: And --

17 THE COURT: If the PBGC terminates it, then what's --
18 I mean, you know, I guess at best you have a claim, right?

19 MS. ROBBINS: Well --

20 THE COURT: If you have a claim.

21 MS. ROBBINS: -- we do have a claim and we'll probably
22 be back seeing you about that claim. But this says we get
23 these benefits. And I want to --

24 THE COURT: Well, the debtor can't give you benefits
25 that it can't give because the PBGC's taken the plan away. How

1 can the debtor continue to administer a plan that the PBGC has
2 determined to terminate?

3 MS. ROBBINS: Your Honor, all we know is that at this
4 point this debtor and General Motors believe that this plan --
5 and let me just address that for a moment since it goes to the
6 implementation agreement. The only modification to the
7 agreements we're talking about was the implementation agreement
8 that was entered into in September of 2008. And what that
9 implementation agreement did was it provided one basis on which
10 Delphi would not provide these pension benefits, and that was
11 that they were transferred through a 414(l) transfer to General
12 Motors. That was what it provided for. So there was one way,
13 in terms of our agreements, that Delphi wouldn't be
14 responsible --

15 THE COURT: That you expressly consented to -- your
16 clients did.

17 MS. ROBBINS: That we entered a binding agreement, and
18 it was binding on both parties. And General Motors also signed
19 that agreement, Your Honor. And here we are today in a
20 situation where both General Motors and Delphi are not abiding
21 by that agreement.

22 THE COURT: Well, I don't see any contention in your
23 papers that GM breached that agreement. I mean, the debtor has
24 rights against GM for breach of that agreement.

25 MS. ROBBINS: Well, I think it's obvious that General

1 Motors has breached that agreement, Your Honor.

2 THE COURT: Why is it obvious? In fact, the debtor
3 says that GM was entitled not to perform the second half of the
4 assumption because of the conditions in the agreement. And
5 there's been -- I mean, the objection doesn't say that the
6 debtors shouldn't be entering into this settlement because GM
7 should be forced to perform its agreement. That's not said in
8 your objection, so --

9 MS. ROBBINS: I think the point that I wanted to make,
10 Your Honor, is that GM was a party to the agreement. It's not
11 separate from this. GM is a party to our agreements. And
12 whether or not Delphi sees GM as having breached those
13 agreement, we would like to point the Court to a provision in
14 our agreements and that deals with equitable treatment that
15 Ms. Mehlsack mentioned a moment ago which goes directly to the
16 pension benefits. Excuse me, Your Honor, it's D(2)(b) --

17 THE COURT: I'm sorry, which agreement is this in?

18 MS. ROBBINS: This is in the MOU.

19 THE COURT: Okay. And what page of your client's one?

20 MS. ROBBINS: Of our client's agreement?

21 THE COURT: Yes, which page is it? No, no, what --

22 MS. ROBBINS: It's 6 of 32, Your Honor.

23 THE COURT: Okay.

24 MS. ROBBINS: At the bottom of the page. And --

25 THE COURT: So what -- I'm sorry, it's paragraph what?

1 2(b)?

2 MS. ROBBINS: 2(b). And this deals with an
3 eventuality that benefits would be reduced, Your Honor. "These
4 benefits will not be reduced from levels in effect as of the
5 date immediately preceding the effective date unless they are
6 similarly reduced for other retired Delphi HRP participants."
7 Now, that's not what's happening, Your Honor. If you will
8 note, at the present time the larger unions are not here, and
9 their treatment, even though they have participants in the
10 Delphi HRP, is not the same as ours.

11 And if you look at Exhibit B to the PBGC settlement
12 agreement, the Court can see why that is true. Among the
13 provisions -- and this is in Exhibit B -- excuse me, Your
14 Honor, I lost my place -- page 7, it's in paragraph 4(b). It
15 basically allows -- and this is very unusual for a PBGC
16 agreement -- it basically allows that notwithstanding PBGC's
17 valuation and allocation of recoveries policy, PBGC's operating
18 manual, section 8.21, in spite of those provisions, General
19 Motors can provide the missing benefits for unions that it
20 determines it wants to do that for.

21 So there are follow-up plans on here -- selective
22 follow-up plans, but PBGC is allowing those. And so what we
23 have is we have a circumvention of our contractual provision
24 that all Delphi HRP participants are going to be treated the
25 same.

1 THE COURT: But --

2 MS. ROBBINS: We are small unions, and that language
3 that we would not be treated differently was absolutely
4 critical. And now we are in a situation where our members, the
5 IAM and the IBEW and IUOE members who worked right alongside
6 UAW members, are going to have entirely different pension
7 benefits even though they participate in the very same Delphi
8 HRP.

9 THE COURT: But let me go back to the contractual
10 argument for a second.

11 MS. ROBBINS: That is part of the contractual argument
12 because that's a contractual clause, Your Honor.

13 THE COURT: Well, I want to focus on the whole
14 provision. And this is 2(b), again, on page 6 of 32? It says
15 "With regard to such amendment and freeze of the Delphi HRP,
16 Delphi will cause the frozen Delphi HRP to pay benefits in
17 accordance with the terms of the Delphi HRP and applicable law.
18 These benefits will not be reduced." And then there's the
19 sentence after that that says, "The IBEW agrees that Delphi
20 reserves its right to seek termination consistent with
21 applicable law."

22 But doesn't "applicable law" include, in the first
23 sentence, 1342? I mean, how can you continue to pay benefits
24 under a plan that under applicable law has been terminated? It
25 just doesn't work, right? There's no plan anymore. There's no

1 benefit committee. There's no administrator. There's no
2 assets, other than as taken over by the PBGC.

3 MS. ROBBINS: So you have the PBGC -- and we'll get to
4 the PBGC's agreement in just a moment and what that agreement
5 looks like, but what we have is the PBGC saying "Oh, we'll take
6 (indiscernible due to technical problem)." And so it certainly
7 doesn't seem like (indiscernible due to technical problem).

8 THE COURT: The "you" you're referring to here is GM,
9 right, not the debtor? The debtors' not subsidizing payments
10 to the steelworkers or the autoworkers, right? It's GM, which
11 has always been careful to say that it guaranteed certain of
12 their benefits but not the other unions.

13 MS. ROBBINS: General Motors signed our implementation
14 agreement. General Motors signed attachments to the MOUs, and
15 in signing the implementation agreement signed the MOU.
16 General Motors, everyone thought, had agreed to take the Delphi
17 HRP. The MDA says General Motors will address the Delphi HRP.
18 General Motors had to negotiate a settlement with the PBGC as
19 part of an integrated document. And until General Motors'
20 exhibit with its contribution was signed, there was no release
21 for these debtors.

22 General Motors is getting all of the assets it wants
23 from Delphi. Even though the PBGC has a seven million dollar
24 claim, liens, and priority claims, what's happening is General
25 Motors is getting those benefits out from under the Pension

1 Benefit Guaranty Corporation and the benefit rights that our
2 clients have.

3 And then, after the PBGC basically walks away with
4 virtually nothing for all of its claims, it releases everybody
5 from having any responsibility for any of the pension plans.
6 And we're supposed to believe that this was PBGC's idea?

7 THE COURT: Well, they signed it.

8 MS. ROBBINS: And they're not here, are they?

9 MR. BUTLER: Actually, they are in the courtroom.

10 MS. ROBBINS: Well --

11 THE COURT: But again --

12 MS. ROBBINS: -- that's good.

13 THE COURT: -- unless the debtor had the right to
14 force GM to do this -- what you want to have -- I don't see how
15 this is relevant to what's before me.

16 MS. ROBBINS: We have an agreement that's being
17 violated, Your Honor.

18 THE COURT: No, what -- I'm focusing now on the GM
19 part of it where you're saying -- are you saying GM violated an
20 agreement with you?

21 MS. ROBBINS: I'm saying, Your Honor, there is such an
22 identity between these institutions. General Motors was the
23 former owner of Delphi and is the future owner of Delphi.
24 General Motors employed our clients for more years than
25 Delphi did. General Motors is not some third party entity that

1 can be evaluated short of this entire enterprise and this
2 entire bankruptcy. It hasn't from the very beginning to the
3 very end.

4 THE COURT: Okay. But it seems to me that point goes
5 to what Mr. Butler has described as sort of the judgment of the
6 debtors to enter into this agreement in the first place, as
7 opposed to -- and I don't mean just the PBGC settlement, I mean
8 the whole MDA.

9 MS. ROBBINS: Right.

10 THE COURT: Okay.

11 MS. ROBBINS: I mean, not right, but I mean, I agree.

12 THE COURT: Okay.

13 MS. ROBBINS: I mean, from the very beginning the idea
14 was General Motors was taking over this pension plan. It was
15 getting the assets. It was going to take the remainder of the
16 pension plan. And now it's, like, no, we'll take the assets
17 and now PBGC step in and take over the pension plan but don't
18 get any assets for it.

19 I wanted to talk for a moment -- I was going to give
20 the Court a cite on this idea that normally add-on plans are
21 not allowed, but in this case there's a special provision right
22 in the PBGC agreement for some of those plans. And that's the
23 PBGC v. LTV Corp., 496 US 633 (1990) decision.

24 One thing I wanted to follow up on, and I've referred
25 to it, but without really any factual information. In this

1 case, we know that PBGC has proofs of claim for seven billion
2 dollars. More than a billion of those -- and I think the Court
3 could take judicial notice of this through the claims
4 registered -- were for priority claims. They had liens as
5 well. But instead, PBGC is taking the pension plan with only a
6 general unsecured claim of three billion dollars. Even if you
7 add in the amount that General Motors is paying in, it's, like,
8 one percent of the PBGC claim.

9 And it seems to us that that's a huge violation of the
10 priority scheme that was established in this agreement, that
11 you have secured interests, priority interests being given away
12 for a general unsecured claim for the benefit of a purchaser.
13 And it is the pensioners who have been promised equal
14 treatment, through the provision I just mentioned, with all
15 others that will be paying the price. And they will be paying
16 the price exclusively since the PBGC and all parties to that
17 have agreed that other people can have top-ups and only a few
18 people will be suffering the consequences.

19 THE COURT: Well, let's parse that out just briefly.
20 First of all, this isn't the PBGC's bankruptcy case, right?
21 It's Delphi's?

22 MS. ROBBINS: That's right, Your Honor.

23 THE COURT: All right. Then --

24 MS. ROBBINS: And it's Delphi's responsibility to
25 provide our pension benefits. And we would rather the PBGC

1 weren't part of it.

2 THE COURT: Okay. And --

3 MS. ROBBINS: That is what we're arguing.

4 THE COURT: And the second point, although I'm not
5 sure it's necessary, is as far as the priority aspect of PBGC's
6 claim, in terms of the payments that are being made to your
7 clients and the other participants in the plan by the PBGC,
8 don't those cash payments exceed the amount of the priority
9 claim?

10 MS. ROBBINS: Excuse me, Your Honor, I didn't
11 understand --

12 THE COURT: Doesn't the --

13 MS. ROBBINS: -- first cash payments to our clients.

14 THE COURT: The payments by the PBGC in taking over
15 the plan and guaranteeing the plan. I understand the PBGC
16 won't be paying out over time the full benefits under the plan,
17 but the amounts that will be paid, don't they exceed the
18 priority claim of the PBGC?

19 MS. ROBBINS: I would not know for sure, Your Honor,
20 but I would tend to doubt it.

21 THE COURT: Why? On what basis?

22 MS. ROBBINS: Because I think that the PBGC's -- I'll
23 start with the first reason I would doubt it is that I would
24 not think that the existence of priority claims versus general
25 unsecured claims would have anything to do with the amount of

1 guaranteed benefits.

2 THE COURT: I'm just talking about the -- never mind.

3 MS. ROBBINS: I --

4 THE COURT: It's not worth arguing this point.

5 MS. ROBBINS: In terms of the question that I think
6 was asked of Ms. Mehlsack, whether there has ever been a
7 decision under ERISA that would prohibit what is going on here,
8 I don't believe there are any decisions that have allowed the
9 kind of global releases that exist here in this kind of
10 situation, or there's ever been a court that's been asked to
11 agree to those kinds of releases at this kind of stage.

12 THE COURT: I didn't ask Ms. Mehlsack that question?

13 MS. ROBBINS: Oh, then maybe it was Mr. Butler; my
14 apologies.

15 THE COURT: Okay.

16 MS. ROBBINS: Your Honor, just to conclude, we think
17 that this is a travesty. And the fact that we represent 120
18 former Delphi employees rather than a larger number doesn't
19 make it any less a travesty.

20 THE COURT: I don't -- I mean, every person who's
21 adversely affected by this counts. So I agree with you that
22 the number of people doesn't matter.

23 MR. BUTLER: Your Honor, do you want the debtors to
24 respond to these objectors first, or do you want to hear from
25 the other objectors?

1 THE COURT: Let me hear from everyone.

2 MR. BUTLER: So on my list, the next party I have --

3 THE COURT: They're making their way up.

4 MR. BUTLER: Mr. Black and Mr. Cunningham?

5 THE COURT: Yes.

6 MR. MOLDOVAN: Good afternoon, Your Honor, Joseph
7 Moldovan from Morrison Cohen. Also with me is Michael Dal Lago
8 at the back of the court. Allow me to introduce Anthony
9 Shelley --

10 MR. SHELLEY: Good afternoon, Your Honor.

11 MR. MOLDOVAN: -- from the firm of Miller & Chevalier,
12 who has been admitted pro hac into this case. We are both here
13 on behalf of Dennis Black and Charles Cunningham who are also
14 present in the back of the court. Mr. Black is also the
15 interim chair of the Delphi Salaried Retiree Association.

16 I know from our prior two experiences before Your
17 Honor that Your Honor is somewhat familiar with our issues, but
18 if Your Honor would permit, Mr. Shelley will continue and
19 present our objection brief to the Court.

20 THE COURT: Okay. That's fine.

21 MR. MOLDOVAN: Thank you, Your Honor.

22 MR. SHELLEY: Good afternoon. Thank you, Your Honor.
23 I'm Anthony Shelley, here on behalf of objectors Dennis Black
24 and Charles Cunningham. They are two participants in Delphi's
25 pension plan for salaried workers. Workers in this plan,

1 during their careers, were not unionized. The only entities
2 protecting their rights in the pension plan are they
3 themselves and, in an ideal world, the fiduciaries of the
4 plan.

5 They bring this objection solely because of their
6 interests in the pension plan. The objection is a procedural
7 one in a sense. We object to the modified reorganization plan
8 because it assumes the lawful termination of this plan because
9 that termination is not completed and will be challenged, in
10 fact, by us in termination proceedings. The termination, in
11 our view, is speculative, and a reorganization plan with a
12 speculative provision such as this should not be approved in
13 our view.

14 THE COURT: Is there any support for that? I mean,
15 plans are conditioned on other events happening all of the
16 time.

17 MR. SHELLEY: Correct, Your Honor. Yes, a couple of
18 cases that there needs to be reasonable assurance that the plan
19 can be effectuated. For instance, a Tenth Circuit case,
20 Ames v. Sundance 973 F.2d 849. A case from the Eastern
21 District of Pennsylvania, In re Lakewood Partners, 1994 Bankr.
22 LEXIS 1291 (Bankr. E.D. Pa. 1994). A third case I'd like to
23 mention, Crestar Bank v. Walker, 165 B.R. 994, where that Court
24 said that the provisions must be reasonably specific, can't
25 rely on specific and indefinite plans or they won't be

1 approved.

2 Obviously, it's a matter of discretion in the Court's
3 point of view, but our point is to just say there are
4 proceedings that are going to be going on in the Eastern
5 District of Michigan which affect this and make this plan
6 termination -- our salary plan termination not a done deal, and
7 as a result, a reorganization plan that rests on it being
8 terminated should not be approved.

9 We don't seek any substantive ruling from the Court on
10 the propriety of the termination. Obviously the Court doesn't
11 have jurisdiction for that. That's for the Eastern District of
12 Michigan. It has exclusive jurisdiction. And as the Court
13 knows, the salaried retirees intend to intervene in that
14 action, but will certainly come to you first before doing so to
15 make sure no stay provisions are violated.

16 Because our objection rests on the speculative nature
17 of the termination, I'd like to just talk a little bit about
18 the termination proceeding itself and why we think there are
19 substantial arguments to challenge the termination, therefore
20 making it an onerous and likely lengthy proceeding in the
21 Eastern District of Michigan that this reorganization plan
22 depends on.

23 There are two types of terminations under ERISA.
24 There are summary terminations and those that require full
25 adjudication. The summary termination, I suspect, is the type

1 that the PBGC and Delphi are intending on pursuing because they
2 talk about the plan administrator entering an agreement to
3 terminate the plan.

4 It's our view that the plan administrator is a
5 fiduciary in that capacity and can only sign such an agreement
6 in the event that it's in the employee's best interest. That
7 has to be the case because otherwise there's no one protecting
8 the employee's interests in such a transaction.

9 And we believe we'll be able to convince the Eastern
10 District of Michigan that because Delphi is actually treating
11 this issue as a corporate decision as opposed to a fiduciary
12 decision, that any agreement that is signed in that capacity
13 would be null and they have to go then to the second type of
14 plan termination which is the adjudicatory type.

15 In that instance, the PBGC will take on the role as a
16 plaintiff. It has to prove its case in the District Court. It
17 has to prove it by a preponderance of evidence. It doesn't get
18 deference under a Chevron or an arbitrary and capricious type
19 of standard.

20 It will have to prove that the termination is in the
21 beneficiaries' best interests; that there will be unreasonable
22 risk to the PBGC's funds without a termination; that it
23 considered and reasonably rejected all reasonable options to
24 termination; and that the conditions associated with the
25 termination, including any amount kicked in by Delphi or GM or

1 whatever, are reasonable.

2 Again, we don't seek to litigate any of those
3 conditions or the propriety of termination. We don't even know
4 what the conditions are, in a sense, because the PBGC has not
5 yet presented the administrative record in the Eastern District
6 of Michigan. But we suspect that there will be substantial
7 arguments to challenge any effort to terminate.

8 We suspect there's discrimination against our
9 nonunionized workers in favor of unionized plans. PBGC will
10 have to explain that. The PBGC will have to prove that it was
11 reasonable to release the liens on other assets. It'll have to
12 prove that it wasn't pressured by another part of the executive
13 branch to do this deal, instead it was only guided by the
14 standards in ERISA Section 1342, and that the releases were
15 reasonable.

16 All of those things are to be determined by the
17 District Court. We don't think that it is clear that those
18 will be -- that the PBGC's termination effort will be approved,
19 and that the plan, therefore, under the terms currently as
20 presented in the various agreements and as we've heard through
21 the press -- because we don't get any actual information from
22 the fiduciaries of the plan at this point -- we think that
23 under those plans the termination will not be approved. We
24 think it will be an arduous and long and complicated process.
25 And because of that, we don't think that the reorganization

1 plan that depends on it should be approved at this time.

2 THE COURT: Okay.

3 MR. SHELLEY: Thank you, Your Honor.

4 THE COURT: Thank you.

5 MS. CALOWAY: Good afternoon, Your Honor. Mary
6 Caloway, Buchanan, Ingersoll & Rooney on behalf of Fiduciary
7 Counselors, Inc. or FCI. FCI was appointed as the independent
8 fiduciary for the debtors' pension plans for the purpose of
9 pursuing, in these bankruptcy cases, claims for unpaid minimum
10 contributions. And in that capacity, FCI has filed a number of
11 claims in these cases, including most recently claims seeking
12 administrative expense status for those unpaid minimum
13 contributions. I suspect I will probably --

14 THE COURT: Going back to something in one of the
15 earlier arguments, what's the amount of those claims, the
16 priority administrative claims?

17 MS. CALOWAY: We have filed for the full amount of the
18 unpaid minimum contributions, which is in excess of 250 or 60
19 million dollars.

20 THE COURT: Okay. Thank you.

21 MS. CALOWAY: And I think, Your Honor, my focus is a
22 little bit more in line with the counsel who spoke just before
23 me in that pointing to the fact that the PBGC settlement
24 agreement reached with the debtors, while it contemplates
25 potential -- I think Mr. Butler used that word or even Your

1 Honor used that word -- the potential termination of these
2 pension plans, as of today and, you know, as of tomorrow even,
3 if the settlement is approved, the pension plans are not yet
4 terminated. And until the pension plans are terminated and
5 until -- or unless and until the pension plans are terminated
6 and the PBGC becomes the statutory trustee, FCI has a
7 continuing fiduciary obligation and duty to pursue its claims
8 for the minimum unpaid contributions, which I understand the
9 debtors and even the PBGC have included as sort of a subset, I
10 think, of that seven billion dollar claim that the PBGC has
11 filed.

12 But those claims belong to the plans. They've never
13 been addressed other than in connection with the PBGC. But the
14 PBGC does not have those minimum contribution claims yet,
15 except to the extent that they had the right to file for the
16 statutory liens. And because FCI's obligation and duty
17 continues, as I said, until and unless the plans are
18 terminated, this reorganization plan doesn't contemplate those
19 claims. It never treated them separately. It never identified
20 them any separately. It doesn't anticipate that there would be
21 any administrative expense priority for any or all of a portion
22 of those claims.

23 But as I have said, and I don't want to belabor the
24 point, as of today, those claims belong to FCI to assert on
25 behalf of the pension plans and for the benefit of the pension

1 plan's participants and we would suggest that a plan that does
2 not contemplate that should not be confirmed.

3 THE COURT: Okay.

4 MS. CALOWAY: Thank you, Your Honor.

5 THE COURT: Can we deal with the last point first?

6 MR. BUTLER: Sure. Can we just -- one moment, Your
7 Honor. I'm just going to set up something.

8 THE COURT: Okay.

9 (Pause)

10 MR. BUTLER: First, Your Honor, the last point raised
11 by Fiduciary Counselors is at docket number 18282. And their
12 objection is Joint Trial Exhibit number 244. I respect the
13 fact that Fiduciary Counselors, Inc. appears today, and I agree
14 with them that until the PBGC effectuates termination, they
15 remain -- FCI remains a player here. And therefore, I respect
16 that fact that they were here. It's one of the reasons we
17 didn't oppose their 3018 --

18 THE COURT: But is the effectiveness of the plan
19 modification not conditioned upon the PBGC settlement and
20 termination, or --

21 MR. BUTLER: No, the effect of the -- the modified
22 plan has as a condition to it that the PBGC settlement
23 agreement -- the Delphi-PBGC settlement agreement shall become
24 effective. All right? And that is true. And that's one of
25 the reasons we're here seeking approval of that so that it

1 would become effective. And what the PBGC has agreed to do is
2 to compromise the claims -- its seven billion dollar claim for
3 a three billion dollar claim -- as part of that agreement.

4 THE COURT: Okay. So as I take it, though, Fiduciary
5 Counselors' argument is that even though the settlement may be
6 approved and go effective, the condition under which the PBGC
7 would take over the claims hasn't necessarily occurred on the
8 effective date.

9 MR. BUTLER: Well, on the --

10 THE COURT: And therefore--

11 MR. BUTLER: It won't occur --

12 THE COURT: -- you need to show at least how the 100
13 cent dollar claims are provided for in the plan.

14 MR. BUTLER: It won't have occurred on the plan
15 modification date, Your Honor, if Your Honor is to approve a
16 plan modification today. But the fact of the matter is, this
17 current plan, as a plan as opposed to a 363 sale, would be
18 difficult to consummate unless the PBGC settlement agreement
19 was implemented and unless the PBGC reached an independent
20 determination about what it was going to do with the plans.

21 I think Your Honor can take notice -- it was already
22 introduced by others here and the PBGC is present in the
23 courtroom -- they've already -- and I'll address this in my
24 argument in a few minutes -- they've already made their
25 determination. That determination was made in advance of

1 today. And I can report it and the PBGC can report to you on
2 the determinations they've reached independently.

3 But as the debtors had indicated in our prior
4 disclosures, including in the disclosure supplement, we don't
5 have the wherewithal to fund these plans. So if these plans
6 were not terminated, it is difficult to imagine that the
7 effective date here would occur under a plan.

8 But I do recognize, Your Honor, and we really haven't
9 been much at odds with Fiduciary Counselors, Inc. They have a
10 role to play here at this point in time in terms of raising
11 these issues as a fiduciary. We respect that. But we believe
12 that their objection ought to be overruled because ultimately
13 Your Honor, I think, can take judicial notice of the
14 determination made by the PBGC. And I also believe that this
15 modified plan could not become effective on a different
16 separate track. We'd have to come back and propose something
17 else if these plans weren't ultimately terminated.

18 THE COURT: Okay. So you can address the other two
19 objections however you want to.

20 MR. BUTLER: Okay. Thank you, Your Honor. First,
21 Your Honor, I just want to ground this discussion and this
22 response in a couple of, I think, important imperatives. Your
23 Honor knows, I think as well as anyone in this courtroom, that
24 one of Delphi's five transformation objectives was to develop a
25 workable solution to our pension plans, which we did in

1 connection with the confirmed plan, and which involved, under
2 the confirmed plan, the assumption of our defined benefit plans
3 by Delphi. And the world that's changed since January of 2008
4 now prevents Delphi from being in a financial position to do
5 that.

6 One of the great regrets in this case, I think, for
7 those of us who've worked on it so hard, is that we could not
8 have found a different solution. The fact that we were able to
9 address some of the pension plans in the initial 414(l)
10 transfer is some solace, but the reality is we tried very hard
11 to be able to address these plans in a way that would have
12 avoided the real human suffering that will go on as a result of
13 what is, I think, inevitably at this point, based on
14 independent actions taken by the PBGC, as a hardship on many,
15 many people. And I deeply regret that, but it is a reality of
16 the world that we are in now that we are not able to finance
17 these.

18 Having said that, then we need to sort of look at the
19 basic fabric of these objections. And I want to address them
20 sort of together. I guess I'll deal with -- because many of my
21 comments will address both.

22 But let me just also say, just so the record is clear,
23 in the United case, which Ms. Mehlsack tried to distinguish
24 because somehow in our agreement or in the GM-PBGC agreement
25 she reads into that some waiver of restoration rights. I just

1 want Your Honor to know that I have the settlement agreement by
2 and between -- among UAL Corporation and its direct and
3 indirect subsidiaries and the PBGC in my hands, the one that
4 all of the case law is predicated on.

5 And at paragraph 6 of that agreement is a complete
6 waiver by the PBGC of all of its restoration rights. I knew
7 that. I knew it when Ms. Mehlsack was talking about it,
8 because working with our special counsel we tried to get that
9 same waiver in our agreements and were unable to. But the fact
10 of the matter is that Ms. Mehlsack has it reversed. The United
11 agreement had a full waiver or restoration rights. The PBGC-
12 Delphi agreement does not.

13 The second thing I wanted to point out -- just to make
14 sure the record is clear on some of these points -- a lot has
15 been said about the Exhibit B to the agreement. And I am,
16 frankly, glad that we exercised the judgment that we did to
17 insist that this agreement be publicly disclosed in these
18 proceedings so that it can be transparent and discussed here in
19 the light of this case.

20 The reality is -- I will say what I did before -- that
21 is, I'm not asking Your Honor to approve Exhibit B. Yes, there
22 is benefits Delphi gets under it, but it is an independent
23 agreement between General Motors Company, the Motors
24 Liquidation Corporation, and PBGC that has been signed and
25 executed between them. And we believe it ought to be

1 disclosed, in part because -- and I acknowledge this -- the
2 ultimate effectiveness of that agreement and the agreement
3 we're asking you to approve is cross-conditioned on both of
4 them becoming effective. And we believed it ought to be
5 disclosed.

6 But there were a number of things said about the GM-
7 PBGC agreement that just, frankly, I'd ask Your Honor to read
8 the full provisions that were cited just so that the record is
9 clear here. I don't believe that 4(b) of that agreement on
10 page 6 in fact is a follow-on agreement, but let me just read
11 the second sentence of 4(b). Ms. Robbins spent some time and I
12 think Ms. Mehlsack spent some time talking about the first part
13 of that sentence which, by the way, wasn't dealing with a whole
14 bunch of unions, it was dealing with the UAW.

15 And it is true that New GM assumed and assigned from
16 Old GM the benefit guarantee agreement between Old GM and the
17 UAW. That is a fact. It's been publicly disclosed. It's also
18 been publicly disclosed that New GM did not assume any other
19 similar benefit guarantees, a decision that has made many
20 stakeholders in this case, and perhaps even Delphi, not
21 particularly thrilled with that decision, but that is the
22 decision that they made.

23 But the provision in 4(b) says, and I quote,
24 "Notwithstanding the provisions of paragraphs 2(a) and 2(b) and
25 paragraph 3 hereof, none of PBGC, GMC, or any of its

1 subsidiaries or Old GM shall release or discharge any disputes,
2 controversies, suits, actions, causes of action, claims,
3 assessments, demands, debts, sums of money, damages, judgments,
4 liabilities, liens, and obligations of any kind whatsoever,
5 upon any legal or equitable theory, whether contractual, common
6 law, statutory, federal, state, local or otherwise, whether
7 known or unknown, that any of them ever had, now have, or
8 hereafter can, shall or may have, from the beginning of time,
9 by reason of any manner, cause, whatsoever against each other
10 relating to the calculation of the amount of or the ERISA title
11 for coverage of the GM UAW benefit guarantee or any similar
12 contractual guarantee by GMC or any of its subsidiaries." And
13 it excepts out the validity and application of certain of
14 PBGC's recovering policies.

15 But that was read to you and argued that in fact this
16 was a release. I think it's exactly the opposite. I think
17 PBGC made the determination, as I read the agreement, not to
18 release those issues but to preserve them for whatever that may
19 be. And I just want the record here of what's being argued to
20 be clear.

21 Now, in connection with -- I want to go back now and
22 address, if I can, first I'm going to address in substance the
23 objection that was made by Mr. Black and Mr. Cunningham, the
24 former DSRA objection at docket number 18277. One of the
25 fundamental mistakes, I think, made in the premises of that

1 objection is that continued assertion by Mr. Black and
2 Mr. Cunningham that someone other than Delphi is the plan
3 administrator of the salaried plan. In fact, Delphi is the
4 plan administrator of the salaried plan. And I'm not talking
5 about the salaried plans or the nonbargained plans. It's very
6 important to make that distinction.

7 THE COURT: But I think they went further and said
8 even if Delphi is the plan administrator and the committee is
9 it just its agents, that Delphi can't act because it's
10 conflicted. So I think they're extending it to Delphi as plan
11 administrator. They may not be waiving their rights that there
12 are these other people that should be replaced too, but they're
13 basically saying that because of a conflict of interest Delphi
14 can't act.

15 MR. BUTLER: Your Honor, I'm not sure what the
16 conflict of interest is because I think you have to look to the
17 salaried plan documents themselves. Article 6(a) of those
18 documents provides that the decision to terminate the salaried
19 plan is a decision that Delphi is entitled to make under the
20 terms of the plan. And in making the decision, Delphi acts as
21 in a settler or nonfiduciary capacity.

22 And there is case law on this and we cited the case
23 law in our responsive papers. They include Curtiss Wright v.
24 Schoonejongen, 514 U.S. 73, 78 (1995); Lockheed Corp. v.
25 Spink, 517 U.S. 882, 890 (1996); and Hughes Aircraft Co. v.

1 Jacobson, 525 U.S.. 432, 444 (1999).

2 Termination of the salaried plan, Your Honor, under
3 the case law, simply does not raise the fiduciary issues
4 described in the objection. It's just a misreading or
5 mis-assertion of the law. Pursuant to the authority that
6 Delphi has -- Delphi -- under Section 6 of the salaried plan,
7 Delphi's board of directors has directed the plan
8 administrator, which is Delphi, to enter into the PBGC-Delphi
9 settlement agreement, and upon Your Honor's approval of it, to
10 execute a termination and trusteeship agreement if that
11 agreement is proposed by the PBGC.

12 So with respect to the non-negotiated, the
13 nonbargained plans, the way in which this settlement agreement
14 that's before you is set up is to the extent Your Honor
15 approves it and authorizes it and enters the modification
16 order, Delphi -- and PBGC reaches its unilateral determination
17 to terminate the plans, then in that instance Delphi will
18 execute a termination and trusteeship agreement if the PBGC
19 proposes it.

20 And I would simply say to Your Honor, as a basic, I
21 think, Supreme Court precedent, it is inconsistent to me that
22 their statement in their objections that somehow an independent
23 fiduciary needs to be appointed to consider whether this should
24 be terminated, I think it's simply inconsistent with precedent
25 which provides that it is the settler, the nonfiduciary, the

1 plan administrator, who makes the decisions to terminate a
2 pension plan in these circumstances.

3 Now, here are the facts. Your Honor said earlier in
4 this argument we should get into the real world. Here are the
5 facts. The salaried plan is underfunded by almost three
6 billion dollars and has contributions totaling more than 200
7 million dollars that are due and unpaid. There is no doubt,
8 frankly, not a scintilla of doubt in my mind and I think in any
9 reasonable person's mind, that Delphi cannot maintain the
10 salaried plan. We do not have the financial wherewithal to do
11 so.

12 PBGC made an independent assessment of this. On July
13 21st of this year PBGC determined, in accordance with 29 U.S.C.
14 1342(a)(1),(2) and (4) that the salaried plan had not met the
15 minimum funding standard under Section 412 of the Internal
16 Revenue Code; that the salaried plan will be unable to pay
17 benefits when due under its terms; that the possible long run
18 loss of the PBGC with respect to the salaried plan may
19 reasonably be expected to increase if the plan is not
20 terminated, and that therefore the salaried plan must be
21 terminated and PBGC appointed statutory trustee.

22 Under ERISA, upon making such finding, PBGC is
23 authorized to enter into an agreement with the plan
24 administrator terminating the plan and appointing PBGC
25 trustee of the plan without further procedural or

1 substantive safeguards for plan participants. That is the law.
2 And that is the law in LTV v. United Steelworkers of America
3 824 F.2d 197, 200 (2d Cir. 1987), that I know Your Honor is
4 aware of.

5 The facts are that whenever PBGC makes a determination
6 under 1342(a) that a pension plan should or must be terminated,
7 as it has already done with the salaried plan, as we stand here
8 today, the PBGC is authorized, as a matter of statute under
9 Section 1342, to apply to the United States District Court in
10 order to terminate or to enter into an agreement with the plan
11 administrator. Again, the LTV cite.

12 Here they have done both. They have entered into a
13 provisional agreement with us that says that as to the salaried
14 plan and as to the subsidiary plans that are nonbargained, that
15 if in fact Your Honor authorizes us as a debtor-in-possession
16 to effectuate the agreement, that we will enter into the
17 trusteeship agreement with PBGC and that will be the end of it.
18 And I think it's irrefutable in these circumstances, under the
19 case law and under the statute, that a plan may be terminated
20 without any further court proceedings upon agreement with the
21 plan administrator.

22 So when I deal with the salaried plan or the
23 subsidiary plans, I go to 3(a) of the PBGC-Delphi agreement and
24 I look at the terms there, and I'm asking Your Honor for
25 permission, for your authority, based on the real facts of this

1 case, to approve the PBGC-Delphi settlement agreement as part
2 of the plan modification order and to allow us to implement it,
3 and we will implement it, with respect to the five plans that
4 are nonbargained.

5 And that's my response to Mr. Black and
6 Mr. Cunningham. It's not a response I say with any degree of
7 satisfaction. I've spent three and a half years with the team
8 here trying to get an alternative to this, but this is what is
9 here, this is what is necessary, and this is what will allow
10 Delphi to reorganize and to move forward. And I wish we could
11 have come to a different result, but the capital markets and
12 the state of the auto industry does not permit it.

13 Now, talking about the bargain --

14 THE COURT: No, afterwards -- sorry, I'm just telling
15 counsel for Black and Cunningham he can speak after you're
16 done.

17 MR. BUTLER: Okay.

18 THE COURT: But finish your argument on the other
19 objectors.

20 MR. BUTLER: Okay. With respect to the bargain plan,
21 here -- and I'm not going to focus this argument on the United
22 case. We believe it's on all points with what we're doing. We
23 believe, in fact, that we structured this to follow carefully
24 the requirements in United. And Your Honor, our papers address
25 that in detail and I'm not going to make a further United

1 argument here unless Your Honor wants me to. I'll be happy to
2 go into it.

3 THE COURT: No, you don't need to.

4 MR. BUTLER: What I would rather do here is focus on
5 certain aspects of the settlement, and then I'll focus on
6 Ms. Robbins' argument that somehow we have violated the labor
7 MOUs in violation of 1113(f).

8 I think Your Honor, having watched it stew in over an
9 almost fifteen-month period, I think Your Honor is aware of how
10 the labor MOUs came into being after an extended hearing under
11 Sections 1113, 1114 of the Bankruptcy Code. And it's also
12 clear under those orders that Your Honor retained jurisdiction
13 to hear and determine all matters arising from the
14 implementation and performance of that order in the MOUs.

15 So Your Honor clearly has jurisdiction expressly
16 retained to make the findings we're asking Your Honor to make
17 today. And we believe that the specific provision of the labor
18 MOUs establish Delphi's right to terminate the Delphi HRP even
19 more clearly.

20 And I agree, every person counts. And the reality is
21 we need to address the IAM, IBEW, and IUOE objections with
22 their own merits. I will note that the UAW, the IUE-CWA, and
23 the USW no longer contest -- they had contested on this
24 record -- no longer contest the determinations we're asking
25 Your Honor to make in the court order -- the plan modification

1 order today.

2 With respect to the IAM, IBEW, and IUOE MOUs, the
3 facts are that they contain explicit reservation of rights to
4 terminate the Delphi HRP. Counsel acknowledged that each of
5 the MOUs has an agreement in it that agrees and acknowledges
6 that Delphi reserves its right to seek termination of the
7 Delphi HRP consistent with applicable law.

8 If that was all there was, we could be having a debate
9 here about whether we're seeking termination and whether that
10 alone was sufficient to give the Court comfort. But the fact
11 is, Attachment C to the labor MOUs also indicates that the
12 agreement was without prejudice to Delphi, quote, "in any
13 pension termination proceeding under ERISA and/or under the
14 Bankruptcy Code."

15 An involuntary termination by the PBGC pursuant to the
16 Delphi-PBGC settlement agreement -- they make their unilateral
17 determination -- has to fall within this definition. There can
18 be no reasonable argument that there's a unilateral
19 modification of these CBAs under Section 1113 of the Code when
20 the agreement specifically provides that the actions complained
21 of can be taken.

22 And here, in addition to the assertion that Delphi
23 reserves its right -- or agreement that Delphi reserves its
24 right to seek termination, there's a further agreement in
25 Attachment C which says that the agreement is without prejudice

1 to Delphi in any pension termination proceeding under ERISA
2 and/or under the Bankruptcy Code. I don't think it could be
3 any more explicit than that.

4 Now, the IUOE, IBEW, and IAM further argue that
5 termination of the HRP would somehow violate the implementation
6 agreements executed following the labor MOUs. And Ms. Robbins
7 pointed out to Your Honor the exhibit that applied to her union
8 was Joint Exhibit 126 was the implementation --

9 THE COURT: I'm sorry, before you -- could you just --
10 where does that appear in Attachment C?

11 MR. BUTLER: Let me get it. Let me get it, Your
12 Honor.

13 (Pause)

14 MR. BUTLER: I've got to pull it, Your Honor. One
15 second.

16 THE COURT: Okay.

17 MR. BUTLER: Your Honor, can I -- I gave you our only
18 binder --

19 THE COURT: You can come back to that -- oh --

20 MR. BUTLER: Can I get your binder back for just one
21 minute?

22 THE COURT: Sure. It had Attachment C, so --

23 MR. BUTLER: Your Honor, we've been at this for almost
24 two and a half hours. Can we take a five-minute recess and
25 I'll --

1 THE COURT: That's fine.

2 MR. BUTLER: Thank you.

3 (Recess from 5:36 p.m. until 5:54 p.m.)

4 THE COURT: Okay. We're back on the record in --

5 MR. BUTLER: Thanks, Judge. We've put the annotated
6 provision on your -- provided it to Your Honor. It's paragraph
7 3(c), the bottom part of paragraph 3(c) of each of Attachment
8 C. We also laid these all out in footnote 28 in our reply
9 brief as they are described there.

10 (Pause)

11 THE COURT: Okay. Thanks.

12 MR. BUTLER: Moving on, Your Honor, to the
13 implementation argument, I believe that Ms. Robbins made the
14 argument that the IUOE, IBEW and IAM believe that termination
15 of the HRP would violate the implementation agreements executed
16 following the labor MOUs. I don't understand that argument
17 because if you look at the implementation agreement, I was
18 making the point that Ms. Robbins identified Joint Exhibit 126
19 as the relevant implementation agreement. All they did was
20 accelerate certain existing rights and obligations under the
21 MOUs. Section 7 of those agreements provided, and I quote,
22 "other than as adjusted, conformed or modified by this
23 implementation agreement, or as required to carry out this
24 implementation agreement, the other terms and conditions of",
25 end quote, the MOUs with the unions remain unchanged. So the

1 implementation agreements didn't alter in any respects Delphi's
2 rights with respect to termination of the HRP. More
3 importantly, the acknowledgement of the three unions that the
4 termination of the HRP, either through a Delphi initiated
5 termination or through a pension termination proceeding, was
6 contemplated by those agreements.

7 For those reasons, Your Honor, we believe that the
8 Delphi PBGC Settlement Agreement should be approved, and Your
9 Honor should overrule the union objections to the modified plan
10 under Section 1113(f) of the Bankruptcy Code. We believe that
11 Your Honor should make an express finding that Delphi may
12 consent to a termination and trusteeship agreement with the
13 PBGC without violating the labor MOUs, or the Section 1113,
14 1114 settlement approval orders, or Section 1113 of the
15 Bankruptcy Code.

16 I should point out, Your Honor, just so the record is
17 clear as to the UAW, USW and IUE-CWA, the record shouldn't be
18 construed that they've consented to this relief. They have
19 simply withdrawn their objections to the relief, and then they
20 take no position on the relief.

21 THE COURT: Okay.

22 MR. BUTLER: And the record should be clear in that
23 respect.

24 THE COURT: All right. Okay. I know that counsel for
25 Mr. Black and Mr. Cunningham wanted to say a brief report too.

1 MR. SHELLEY: Thank you, Your Honor. Just a few brief
2 points. Most of the material Mr. Butler raised about settlor
3 functions and the administrative, the plan administrator's
4 obligations, those are really matters for the Eastern District
5 of Michigan to decide. Those are substantive matters. Our
6 only point is that there are arguments being made on both sides
7 that make the plan termination not inevitable, and, therefore,
8 speculative. But I --

9 THE COURT: Well, it may not be inevitable, but, I
10 mean, if you're raising an objection at all it's a feasibility
11 objection. So I do have to consider feasibility --

12 MR. SHELLEY: Sure.

13 THE COURT: -- and so --

14 MR. SHELLEY: Yes, and I do want to get to the more
15 substantive issue then.

16 THE COURT: All right.

17 MR. SHELLEY: The idea of a settlor function, this
18 being a settlor function to terminate this plan that Delphi is
19 exercising, it makes no sense. They're not even terminating
20 it. It's an involuntary termination. It's PBGC versus Delphi.
21 So the idea that this would be a settlor function, we don't
22 think holds up. It also is, under the statute, a function
23 that's given to someone called the plan administrator. And,
24 typically, it's not given to the sponsor. ERISA talks about
25 sponsors. It's not given to the employer. ERISA talks about

1 those too. It's given to the plan administrator, and under
2 ERISA it's a fiduciary function if the plan administrator is
3 exercising any kind of discretion. The idea that the plan
4 administrator would agree to a termination in one way, as
5 opposed to another, is a discretionary matter, and cases hold
6 that the method of termination, even if termination isn't -- is
7 a settlor function, is not, is itself a fiduciary function.

8 THE COURT: But that didn't seem to be much of an
9 issue for the Courts in LTV, including the Supreme Court --

10 MR. SHELLEY: Well, and the reason --

11 THE COURT: -- or the Seventh Circuit in UAL.

12 MR. SHELLEY: The Supreme Court cases that talk about
13 settlor functions, they aren't involuntary terminations. There
14 are other types of terminations when everyone's made whole --

15 THE COURT: No, but in LTV they agreed not to enter
16 it. Once the PBGC had decided to terminate LTV agreed to the
17 procedure under 1142(c), the fourth sentence of it, and --

18 MR. SHELLEY: Yes.

19 THE COURT: -- that was LTV as plan administrator. It
20 didn't seem to bother anyone.

21 MR. SHELLEY: And it all makes sense if the plan
22 administrator is acting with an eye towards what's in the best
23 interest of the employees. You can have a summary termination,
24 because those people who are harmed by it are being protected
25 by the usual fiduciary function that the plan administrator is

1 exercising. But if they're conflicted, or they're thinking
2 about the corporate interest as opposed to the employee's
3 interest, then there's no question that in all the papers that
4 have been filed Delphi is saying plan administrator equals
5 Delphi. That they're not taking it on as a fiduciary function.
6 So these are arguments we're going to make in --

7 THE COURT: But why isn't 1303 the issue there? I
8 mean isn't that the remedy --

9 MR. SHELLEY: To go after the PBGC --

10 THE COURT: -- 1303?

11 MR. SHELLEY: -- for instance?

12 THE COURT: Yes.

13 MR. SHELLEY: Well, the plan has to be terminated
14 first. It has not been terminated, and so we will go through a
15 1303 into the Eastern District of Michigan and raise our
16 arguments that this plan cannot be properly terminated, at
17 least it can't be summarily terminated, and that through an
18 adjudication we'll make all the arguments on the merits that we
19 think are appropriate as to why the termination standard itself
20 cannot be satisfied and a district court shouldn't approve
21 that.

22 The last point I'd like to make is that we very much
23 understand the real world, and that this plan has been run into
24 the ground, and that there isn't enough money, and it's likely
25 to be terminated in the end. But it being terminated based on

1 the current terms and with the current strings attached or the
2 current conditions is one thing, and being terminated in
3 another way that the Eastern District of Michigan might say
4 complies with all of the standards of termination is quite
5 another thing. So if this plan is terminated down the road,
6 that may happen, but that it will be terminated on the terms
7 and conditions that are expected right now is quite another
8 thing. So our argument is that the termination should play out
9 before the Court should approve the modified reorganization
10 plan.

11 THE COURT: Okay.

12 MR. SHELLEY: Thank you.

13 MS. ROBBINS: Your Honor, I wanted to just --

14 THE COURT: I think you have to come closer to a
15 microphone.

16 MS. ROBBINS: Two very quick points just on
17 interpretation of language, Your Honor. If you look at 3(c) on
18 page 29 of the various MOUs that, first of all, only applies to
19 the SAPT, which is that attachment. It does not apply to the
20 entire agreement. It does not apply to the section on pension
21 we referred to earlier. But the other point that I want to
22 point out to the Court is this is a reservation of rights for
23 all parties. It is not something that provides a specific
24 right for Delphi. It's basically saying we can continue to
25 take our positions so they can continue to take their positions

1 as to the SAPT, which is this attachment. It's not something
2 that provides any rights or acknowledges any rights.

3 The other point that I would just make is that in that
4 section of the Attachment B to the PBGC agreement 4(b), while
5 there is a discussion about maintaining rights to address
6 calculations with respect to certain add-ons.

7 The very last reference that I made was excepting the
8 validity in the application. Not accepting, E-X excepting the
9 validity and application of the PBGC policies. Now, we haven't
10 gotten the discovery materials from the PBGC to know everything
11 about how this was negotiated or what it means, but it looks
12 like that last provision is excluded from the reservation of
13 rights, just looking at the language. Thank you.

14 THE COURT: Okay.

15 MS. MEHLSACK: Your Honor? Just briefly. Mr. Butler
16 mentioned that the agreement in the United case had a broader
17 waiver with respect to the PBGC's rights than was able to be
18 obtained in this case.

19 THE COURT: Well, actually a more specific waiver.

20 MS. MEHLSACK: A more specific waiver. Sorry.

21 MS. MEHLSACK: Whatever it was, Your Honor, it was
22 clearly not raised before the United Court, and nor were the
23 4047 issues or 1303 issues that we raised, so that the United
24 case is not dispositive in this regard, because the issues
25 simply weren't raised before the Court.

1 The other is, Your Honor, that, again, the provisions
2 that Mr. Butler cites with respect to Exhibit C do nothing to
3 derogate from the rights of the unions and the participants
4 under the collective bargaining agreement that provide that any
5 kind of a reduction in benefits shall be equitable when it
6 comes to all participants in the HRP, and the effective of
7 what, the consequences of what's happening here are there is
8 not such an equitable reduction. I know that Mr. Butler said
9 well, that's GM's issue, not Delphi's issue, but the overall
10 purchase price of the assets that Delphi is transferring to GM
11 are what this plan is all about. And so the question of how
12 much might be allocated to what are being called to-ups for the
13 other unions who are, yes, have withdrawn their objections and
14 who, as Mr. Kennedy acknowledged, are in the process of
15 negotiations, those are all issues that Delphi had the
16 opportunity to negotiate. We haven't had that opportunity, nor
17 does it look like we will be getting that opportunity. Thank
18 you, Your Honor.

19 THE COURT: Okay. All right. We've been addressing
20 three objections to the plan modification motion and the
21 debtors' request for approval of an integral settlement to that
22 motion, which is the debtors' agreement with the PBGC dated as
23 of July 21, 2009. The objection I'll deal with first is by
24 Messrs. Black and Cunningham, who are individuals who are
25 covered by the Salaried Workers' Pension Plan. They contend

1 that the agreement between the debtors and the PBGC is one that
2 I shouldn't approve because the benefits of that agreement
3 which flow from the ultimate termination of the pension plans
4 and their being taken over by the PBGC, are too speculative for
5 me to consider that the plan itself is feasible in light of
6 that contention. It's also contended that the agreement itself
7 is too indefinite. To the extent that objection was originally
8 raised when it pertained to the original terms of the
9 modification that stated that the plans would be addressed by
10 GM, and the language in the disclosure statement that made it
11 clear that no one really knew from the debtors' perspective
12 what that meant, would have some real merit. But since that
13 time the debtors entered into the PBGC settlement agreement,
14 and I believe that those terms are clear at this point and not
15 indefinite. So, really, the only objection that is even
16 colorable is the feasibility objection.

17 On that score, the objection is somewhat coy in that
18 it raises for the Court the issue of the PBGC not being able to
19 terminate the plans, notwithstanding its authority under 29
20 U.S.C. 1342, but at the same time doesn't really provide me
21 with a lot of reasoning as to why that would not be the case.
22 To the extent that there have been arguments raised by the
23 objectors I have considered them, and I believe that for
24 purposes of determining feasibility of the plan as modified and
25 whether the debtors are entering into an agreement that is

1 illusory, I conclude that the objection should be denied.

2 The debtors do not ask for a determination that they
3 are authorized to enter into the termination agreement with the
4 PBGC under Section 3(b)(i) of the settlement agreement for all
5 purposes, but only that such termination would not be a
6 violation of the labor MOUs, the Union 1113, 1114 settlement
7 approval orders or the local agreement between Delphi,
8 Connection Systems, and Electronic and Space Technicians Local
9 1553. So I'm not determining and not being asked to determine
10 whether Delphi as plan administrator would have the right to
11 enter into the termination and trusteeship agreement in the
12 form attached as Exhibit C to the settlement agreement
13 otherwise.

14 But I conclude that, there's certainly a reasonable
15 likelihood in my mind that a) that the PBGC's termination, to
16 terminate these plans will be upheld, and, b) that Delphi will
17 be able to enter into the termination and trusteeship agreement
18 to expedite that termination and reduce the costs thereof.

19 The record is clear and uncontroverted that these
20 plans are both seriously underfunded and that the debtors have
21 very substantial unpaid post-petition contributions to the plan
22 in the nature of hundreds of millions of dollars, and, more
23 importantly, that the debtors lack the cash to continue to make
24 post-petition contributions to these plans, given the fact that
25 they have no source of ongoing funding except as been agreed to

1 by GM and the DIP lenders in connection with facilitating the
2 transactions before me, all of which are an outgrowth of a
3 several month period where the debtor was living on week to
4 week and sometimes day-to-day extensions of forbearance under a
5 terminated DIP facility without any ability to obtain
6 replacement financing.

7 So it appears to me that it is reasonable to assume
8 that the PBGC settlement agreement is not illusory, that, in
9 fact, the determination by the PBGC to terminate the pension
10 plan under 29 U.S.C. Section 1142 is appropriate in that the
11 debtors will be enabled to facilitate that implementation
12 through the termination and trusteeship agreement referenced in
13 paragraph 3(b)(i).

14 So, again, without ultimately deciding the underlying
15 issues, including whether the only remedy for parties aggrieved
16 by such a determined by the PBGC is under 29 U.S.C. Section
17 1303, I conclude that the plan modification is feasible and
18 that the agreement is not illusory and that the debtors,
19 therefore, are exercising proper business judgment to enter
20 into it.

21 The objection by Fiduciary Counselors Inc. also,
22 ultimately, in my mind, is a feasibility objection, other than
23 simply a statement by FCI that it continues to protect the
24 rights of the plans for unpaid contributions unless and until
25 the PBGC takes over those rights upon a termination. The

1 debtors candidly acknowledge that if, in fact, after approval
2 of the PBGC settlement agreement the PBGC is somewhat stymied
3 in terminating the pension plans, the debtors would not be able
4 to implement the plan as modified, and, therefore, that if that
5 condition occurred the plan would not be feasible. I am
6 painfully aware of the consequences of confirming a plan, i.e.
7 this plan, the one that's currently in place for the debtors,
8 when there is an open contingency as to feasibility in that
9 ultimately the current plan in effect was rendered infeasible
10 by the determination of the plan investors not to close.

11 However, again, for the reasons that I previously
12 stated with regard to Messrs. Black and Cunningham's objection,
13 it appears reasonable to me to conclude that the PBGC's
14 determination to terminate these plans which are, again, very
15 seriously underfunded and, more importantly, cannot be funded
16 going forward by the debtor, will stand up, and, consequently,
17 I believe that based on that reasonable assumption this plan
18 modification is feasible. Obviously, FCI has reserved all of
19 its rights in the event that the plan is not terminated, and
20 I'm sure will be back pursuing its claims if that is the case,
21 although at that point one would wonder, and, frankly, given
22 the FTI liquidation analysis, which is uncontroverted, one
23 would assume that there would be no recovery on that claim at
24 that point, which is another reason why I believe that this
25 plan, to the extent it hinges upon the PBGC's termination of

1 these plans is feasible, in that that liquidation scenario with
2 no recovery beyond secured creditors is avoided. So I will
3 overrule the FCI objection.

4 Finally, three of the debtors' unions have objected to
5 the plan modification and the PBGC's settlement. The IUOE, the
6 IBEW and the IAM, those unions contend the settlement violates
7 their memorandums of understanding and the related agreements
8 to those that appear in Exhibits 122 and 126 in the record.
9 And, further, that the Court cannot make the finding sought by
10 the debtors, which, again, appears at paragraph 3(b)(i) of the
11 PBGC settlement, that the termination by the PBGC under 29
12 U.S.C. Section 1342 is not a violation of the agreements that
13 the debtors have with them. The law I believe is clear that
14 the PBGC may terminate a pension plan under Section 1342
15 notwithstanding that a collective bargaining agreement has
16 within it as a provision that the plan be maintained. See
17 Pension Benefit Guaranty Corporation v. LTD Corporation, 496
18 U.S. 633 at 639 (1990) in which the Supreme Court said, "The
19 PBGC may terminate a plan involuntarily notwithstanding the
20 existence of a collective bargaining agreement." See also In
21 re Jones & Rothland Hourly Pension Plan in Pension Benefit
22 Guaranty Corporation v. LTD Corporation 824 F.2d 197 (2d Cir.
23 1987). Which stands for the same proposition, and further
24 states that -- or stands for the proposition that under the
25 four-sentence subsection 1342(c) of 29 U.S.C. the PBGC need not

1 comply with the other requirements of the subsection and,
2 therefore, does not need to go through a pre-termination court
3 adjudication that would give a union a right to notice where
4 there has been an agreement following that determination to
5 terminate to enter into a termination and trusteeship agreement
6 with the plan sponsor and administrator such as is contemplated
7 by paragraph 3(b)(I) of the PBGC settlement.

8 So it appears to me clear that the action of the PBGC
9 under the PBGC settlement agreement, which is the termination
10 that is referred to in that subparagraph of paragraph 3 does
11 not violate the union agreements, or require determination
12 under Section 1113 or 1114 of the Bankruptcy Code.

13 This very issues was addressed relatively recently by
14 the Seventh Circuit in In re UAL Corporation, 428 F.3d 677 (7th
15 Cir. 2005). And, frankly, based on my review of the PBGC
16 settlement agreement and the language of the agreement between
17 the PBGC and United Airlines quoted in the Seventh Circuit
18 opinion I've just cited, it appears to me that the relief the
19 debtors are seeking is on all fours with the Seventh Circuit's
20 determination that entry into such a settlement agreement by a
21 debtor does not violate Section 1113 or 1114 of the Bankruptcy
22 Code. It's clear to me from reading the settlement agreement
23 that the termination under Section 1142 of the pension plans
24 described therein is left to the determination of the PBGC.
25 And it is only if and when the PBGC issues a notice of

1 determination pursuant to Section 29 U.S.C. 1342 that any
2 obligation of the debtors kicks in. That's, I believe, on all
3 fours with the agreement at issue in the United Airlines case.
4 All of the language in the PBGC settlement agreement pertaining
5 to the determination by the PBGC is expressed in terms of a
6 condition occurring later or in precatory language, or as
7 stated to the extent that the PBGC so acts.

8 So the agreement insofar it deals with termination of
9 the pension plan hinges upon the PBGC's actions under 1142 and
10 not the debtors.

11 Further, I don't believe there's anything pretextual
12 or underhanded in the way that right of the PBGC is recognized
13 here.

14 It is also argued by the two unions that the
15 settlement agreement locks in the PBGC to actions that the PBGC
16 should not be locked into if the PBGC were acting properly. It
17 is not my function or jurisdiction to evaluate whether the PBGC
18 is acting properly or not in the context of this motion. I'm
19 not being asked to approve the PBGC's actions. Rather, as the
20 Bankruptcy Code and case law is clear, I am supposed to
21 evaluate a settlement from the perspective of the debtors'
22 estate and creditors. That point was made on a jurisdictional
23 basis in the UAL case as I previously ruled in dealing with the
24 jurisdictional objection made earlier in this hearing.

25 But it's also a principle of substantive law that my

1 review is based on what's in the best interest of the estate
2 and whether the settlement is fair and reasonable as far as the
3 debtors' estate and creditors are concerned. Indeed, as
4 potential creditors of the PBGC under Section 1303, I think
5 it's -- it would be doubly improper for me to evaluate those
6 objections raised by the union that goes to the PBGC's
7 determination to enter into this agreement. See generally *In*
8 *re Refco Inc.*, 505 F.3d 109 (2d Cir. 2007).

9 It was also suggested, I think, that by compromising
10 the PBGC's claims which include potential secured claims as
11 well as priority administrative claims for post-petition
12 contributions the settlement would alter the priority rules of
13 the Bankruptcy Code. I believe that was a backhanded reference
14 to the Second Circuit's *Iridium* decision. However, that
15 decision addressed settlements that purported to alter the
16 rights of creditors who are not party to the settlement. The
17 PBGC, once the plans are terminated, would have the claims,
18 itself, and is prepared and capable under 29 U.S.C. 1367 to
19 settle those claims which are contingent at this point
20 conditioned upon plan termination. So I don't believe that
21 there's any question of violation of the fair and equitable
22 aspect of approval of a settlement as articulated by the Second
23 Circuit in *In re Iridium*.

24 I'd also note, that the PBGC, while not pursuant to
25 its statutory mandate, liable for paying all of the benefits

1 that are provided for under the plan's pre-termination will be
2 paying substantially more over time than the priority or
3 administrative claim benefits. So under any argument, I don't
4 believe that the debtors by entering into this settlement are
5 somehow skewing anyone's rights to recover as a priority or
6 administrative creditor.

7 Finally, it was argued that the settlement agreement
8 would give this Court's blessing to actions by the PBGC as
9 opposed to authorizing the debtor to perform the settlement.
10 I've already addressed that point, I believe, including this
11 citation to the Refco case. But I do note further that for
12 purposes of clarity the order that the debtors have asked me to
13 enter specifically reserves parties rights under 29 U.S.C.
14 Section 1303.

15 Other than that, all I can say is that it appears
16 reasonable to me for the PBGC to have acted in the way it did
17 sufficient for me to find, as I said previously, the
18 modification of the plan is feasible insofar as it depends upon
19 the termination of the pension plan. And that to the extent
20 the PBGC actions in entering into that agreement are subject to
21 review, my order approving the settlement does not preclude
22 such review as a matter of law. Although, if indeed, the
23 debtors enter into the termination and trustee agreement, the
24 degree of review may be significantly curtailed as set forth in
25 the Second Circuit LTD case that I've previously cited.

1 The debtors have further stated that various
2 provisions of their agreements with these unions in the -- in
3 particular paragraph 2(b) of the MOU at page 6 of 32 and
4 attachment C acknowledged the debtors' rights under the MOU to
5 seek termination of the plan or the plans. But I believe
6 that's unnecessary to rely upon, given that the undertakings to
7 maintain the benefits under the plans are subject to applicable
8 law and I see no basis for the debtor to be compelled to
9 maintain an agreement that is terminatable by the PBGC without
10 any reference to whether the agreement is in a collective
11 bargaining agreement or not.

12 So for those reasons, I'll overrule the three unions'
13 objections to the modification motion and to the PBGC
14 settlement.

15 MR. BUTLER: Your Honor, I was asked by counsel for
16 American Aikoku Alpha Inc., their objection is at docket number
17 17773, whether we could take up his objection next because of
18 some travel commitments that he has.

19 THE COURT: Okay.

20 MR. BUTLER: So I will turn to that objection and then
21 go back to some other matters.

22 THE COURT: Okay.

23 MR. VIST: Thank you, Mr. Butler. Good evening,
24 Judge. Gary Vist for American Aikoku.

25 The gist of our objection -- as I said it earlier, we

1 have three objections, two are specific to assumption -- non-
2 assumption notices. I don't want to take up the Court's time
3 with these today.

4 The third objection is the objection to the plan,
5 itself. Basically, my client and Delphi have entered into a
6 stipulation in May of 2008 under which my client is supposed to
7 get approximately 414,000 dollars upon the sale of the steering
8 and half shaft business. The stipulation that we have entered
9 into also provides that to the extent that any order related to
10 the sale of the steering and half shaft business alters,
11 conflicts with, or derogates from the provision of this
12 stipulation this stipulation shall control.

13 Our understanding is that the steering and half shaft
14 business is being sold to GM as a part of this modification
15 plan. It is the debtors' position that the plan allows them to
16 basically not pay the stipulation amount in full but to
17 basically make a partial payment under it. We believe that the
18 language of the stipulation is clear and that the plan has to
19 be modified to provide that if there's any agreement between
20 the debtor and the creditor, that where a statutory agreement
21 says that the agreement would supersede any future order
22 conflicting with it, that the plan has to be modified to
23 provide that such agreement does take precedent over any
24 provision set forth, or any proceeding allowed by the plan.

25 And that is the gist of our objection.

1 (Pause)

2 MR. BUTLER: Your Honor, just give me one moment.

3 (Pause)

4 MR. BUTLER: Your Honor, as counsel indicated, two of
5 their three objections have been adjourned to the August 17th
6 hearing.

7 The objection that they're trying to assert now
8 somehow is that the stipulation attaches Exhibit C to the
9 objection, is somehow enforceable in the context of the
10 modified plan. That objection resolved an objection to a sale
11 that later failed. And if you look at the title of the
12 objection the title was, "A stipulation agreed order resolving
13 assumption or assignment of the executor contractor or
14 unexpired lease to the buyers in connection with the sale of
15 steering or half shaft." That sale failed, it never went
16 forward. And they've now asserted new objections with respect
17 to the current modified plan. Those objections have moved
18 forward to the August 17th hearing. And I don't believe that
19 you can interpret this order as suggesting that under every
20 circumstance in these cases if the sale that they were settling
21 in did not proceed, and, in fact, did not go forward, that they
22 ought to be able to get the kind of relief that they addressed
23 here.

24 I also would point out to Your Honor, that in addition
25 to this agreement being solely in the context of the selling of

1 Steering Solutions to what was actually Platinum at the time,
2 there is no obligation set forth anywhere in this stipulation
3 that obligates us to assume their contracts. And these
4 involved to a certain extent, I believe expired purchase
5 agreements at this point. And so I think that just in
6 referring to the overall objection as it relates to the plan, I
7 believe that the plan objection, Your Honor, should be
8 overruled.

9 MR. VIST: Let me just briefly, Your Honor.

10 I believe most of the issues will be addressed on
11 August 17th with respect to the contracts, whether it expired
12 or not, et cetera. But our position is that the stipulation is
13 not specific to the sale of Platinum. Both pages 6 and 7 of
14 the stipulation which provide that we are going to get paid
15 upon the sale of the steering and half shaft business do not
16 state that we're going to get paid only if that business is
17 sold to Platinum. The capital letters are not used, it's a
18 generic language. And, again, therefore, we believe that we're
19 entitled to be paid whenever this division is sold to anyone,
20 and we believe the obligation is absolute. And we believe that
21 paragraph 5 thus provides that the stipulation controls
22 vis-a-vis any future order that conflicts with it.

23 THE COURT: But it refers to a cure payment, right? I
24 mean, that's a 365 term, right, where a contract's assumed?

25 MR. VIST: It does refer to a cure payment, but it

1 doesn't specifically address assumption or non-assumption. And
2 in negotiations over it there were actually no assumption or
3 non-assumption discussions. And, obviously, again, I don't
4 know how to bifurcate that with what we're going to argue or
5 maybe not argue on August 17th. But, at least, with respect to
6 the plan we've tried to limit it where if the plan does allow
7 the debtor to basically neglect to follow through on its
8 obligations under a prior agreement we believe the plan should
9 be modified to reflect that.

10 MR. BUTLER: Your Honor --

11 THE COURT: But that presumes that the debtor has
12 obligations under the agreement?

13 MR. VIST: Yes.

14 MR. BUTLER: Your Honor, that's precisely our point.
15 If you actually read the terms at page 7 of the stipulation it
16 basically says as soon as reasonably practical upon the closing
17 of the sale. It doesn't say any sale, it's "the sale," the
18 sale that was part of the 365 agreements pursuant to which this
19 cure was entered into they should receive a cure payment. No
20 sale occurred, they didn't receive a cure payment. Paragraph
21 2, "Upon payment of the cure amount their claim shall be
22 disallowed and expunged." No cure occurred, no payment was
23 made, their claims were not expunged.

24 The steering objection's irrelevant because that sale
25 never closed. "And, similarly, upon payment of the cure amount

1 paragraph 4 American Aikoku shall be deemed to have withdrawn
2 with prejudice the reclamation demand, the cure proposal, the
3 response, the amended claim motion," none of which are deemed
4 withdrawn because they were not paid the cure amount. And
5 what's happened since 2008 to now, I believe, when we'll find
6 out -- we'll deal with this on August 17th, is their contracts
7 have expired. And I don't believe that they're going to be
8 able to assert, we'll determine at that point in time. I think
9 this argument is in part because they received, I believe, a
10 notice of non-assumption for one of the contracts that expired,
11 and is no longer subject to cure, because it expired in
12 accordance with its terms.

13 And paragraph 5 says to the extent that any order
14 related to "the sale" of the steering -- "the sale" has to mean
15 this sale not any sale. This was a 365 agreement that was
16 reached in the context of the assumption and assignment of this
17 contract to Platinum. That assumption and assignment never
18 occurred, is not going to occur. And just like all of the
19 other assumption and assignment agreements that were reached
20 back then in terms of the actual assignment over in connection
21 with steering, there are because of the passage of time and the
22 change in agreements, and I think counsel would acknowledge
23 that as to his own clients, the contracts have expired unless
24 he wants to argue they haven't at the time of the hearing on
25 August 17th, they don't exist anymore. And you can't now go

1 back and get another pre-petition payment on something under
2 these circumstances.

3 But I'm not here to argue the cure issues, just to say
4 to Your Honor that as -- their general objection is somehow
5 this plan can't be confirmed because we're somehow violating
6 the Bankruptcy Code or violating prior orders of the Court, I
7 would ask Your Honor to find that there's no violation of this
8 order because this sale never closed, therefore no cure was
9 ever due and owing with respect to the sale.

10 THE COURT: Okay.

11 MR. VIST: If I may, just for the record, we are going
12 to argue that the contracts are still in existence on their
13 face, they're expiring in 2011. But, again, we'll take that up
14 on August 17th.

15 THE COURT: All right. But as far as this objection
16 goes, I just don't read this stipulation and order, which is
17 attached as Exhibit C to Aikoku's objection, as requiring
18 payment of money other than in the context of a request to
19 assume the contract by the debtors. The phrase used is "as
20 soon a reasonably practicable upon the closing of the sale of
21 the steering and half shaft business, American Aikoku shall
22 receive a cure payment of \$413,908.96 to cure all default under
23 the purchase orders." The word "cure" is a term of art under
24 the Bankruptcy Code, it's used in Section 365(b) in connection
25 with the right of a debtor to assume an executory contract or

1 unexpired lease. The debtor has to cure all pre-petition
2 defaults or provide adequate assurance of prompt cure.
3 Otherwise, if the debtor is not assuming a contract, the debtor
4 is not authorized to pay pre-petition debt except in
5 extraordinary circumstances. And, certainly, submission of a
6 stipulation and order like this under the circumstances under
7 which this was entered on May 28th, would not count as
8 extraordinary circumstances.

9 Furthermore, the introductory clauses putting the
10 order in context note that in connection with the request by
11 the debtors to approve a specific transaction, they filed as
12 was contemplated, an assumption notice and a notice of cure
13 amount, giving nondebtor parties to contracts an opportunity to
14 object to the proposed assumption of the contracts. And, in
15 fact, the recital on page 5 states that American Aikoku filed
16 its notice of cure claims of American Aikoku Alpha Inc., docket
17 number 13010, the cure proposal asserting a cure amount of
18 415,761 dollars to cure defaults under the purchase orders.

19 So it appears to me clear from both the context and
20 plain language of the agreement as well as the obligations of
21 the debtor under the Bankruptcy Code, that the only reason
22 interpretation of this paragraph 1 is that it applies to a
23 specific request to assume the contracts. So unless the
24 debtors are moving to assume this agreement, I don't believe
25 this is enforceable.

1 MR. VIST: Thank you, Judge.

2 THE COURT: Frankly, I think I've ruled that in this
3 case before in connection with someone else's arguments in
4 respect of an executory contract that was assumed, assuming
5 that the plan would be confirmed and go effective.

6 So to the extent it's not law of the case it is now.

7 MR. VIST: Okay.

8 MR. BUTLER: Your Honor, I don't see Ms. Robins and
9 Ms. Mehlsack here. They had arguably some other objections in
10 their pleadings, and I'll need to check with them to see if
11 they intend to pursue them.

12 THE COURT: I think it's the business judgment --

13 MR. BUTLER: Right.

14 THE COURT: -- of entering into these agreements in
15 the first place, or whatever standards you apply whether it was
16 appropriate to enter into these agreements.

17 MR. BUTLER: And I'll be addressing those, Your Honor,
18 at the end, in what I think will be an abbreviated close.

19 With respect to the last objection that I think an
20 objector has indicated they wish to pursue, it would be Mr.
21 Sumpter who is on the telephone I believe, who filed a COBRA
22 motion under docket number 18366. We filed an opposition to
23 that under docket number 16457. And I would just say, Your
24 Honor, that the initial -- Mr. Sumpter is participating today
25 on a pro se basis. I did want to say, Your Honor, at the

1 outset of this that this particular objector participated in
2 and was an objector in the OPEB termination litigation at which
3 these issues were addressed. And we believe that the OPEB
4 termination order which Mr. Sumpter did not appeal acts on a
5 res judicata basis, his motion. We do not believe that there
6 is a COBRA benefit that exists, this is -- Your Honor, may
7 recall we had that technical discussion on the record --

8 THE COURT: The twelve-month issue?

9 MR. BUTLER: Twelve month either way. Twelve month
10 before you file, twelve month after you file, about a twenty-
11 four month window. And this is occurring outside of the
12 window. We had that -- that was discussed at length, and there
13 were pleadings filed at length on all sides as it relates to
14 those issues in the OPEB termination matters.

15 So I think, initially, Your Honor, the debtors believe
16 this would be barred by principle of res judicata. And I
17 understand that Mr. Sumpter is appearing pro se. So just --
18 and I think -- but I do think I have an obligation to raise it,
19 and I think Mr. Sumpter should acknowledge to the Court that he
20 was an objector to that hearing and probably recalls that these
21 issues were, in fact, discussed at that hearing and were part
22 of the record at that hearing. I don't expect Mr. Sumpter
23 necessarily would understand the principles of res judicata and
24 I'm not trying to use a lot of fancy words in defending against
25 his objection, but I do have an obligation to raise that.

1 THE COURT: Okay. Mr. Sumpster, you still on the
2 phone.

3 MR. SUMPTER: Yes, I am.

4 THE COURT: All right. You were a party -- you did
5 object to that earlier motion, correct?

6 MR. SUMPTER: I objected to the termination of
7 benefits without the 1114 committee.

8 I received a notice I think around February 5th. And
9 I think it was a hearing -- they mailed the schedule for the
10 17th and then later -- but that is what I objected to.

11 THE COURT: Okay. All right. Well, do you have
12 anything to add to the objection that you filed, which I know
13 my chambers had told you effectively this issue would be dealt
14 with as an objection to the plan. And so that's why it's being
15 heard now, which I guess is -- in my view it was on all fours
16 with the other relief that you had sought.

17 MR. SUMPTER: I'm sorry, I don't understand that.

18 THE COURT: Do you have anything to add to the
19 objection -- to the pleading that you filed?

20 MR. SUMPTER: Yes. Yes, I do.

21 THE COURT: Okay.

22 MR. SUMPTER: First, if it's permitted, I'd like to
23 comment on the comments here. The person just may not have
24 (indiscernible) had the same.

25 But in terms of discussing this part of the statute,

1 what I have in my information is that the debtors' attorney
2 started off with a response to a request for a stay. And in
3 that comment or in that section it mentioned that you had ruled
4 before. But there was no motion on to it and no ruling on it
5 from any source that I have.

6 But I did -- before I submitted this motion, I thought
7 it was important that I try to get a ruling from the Internal
8 Revenue Service and the Department of Labor because part of the
9 statutes say that they have to agree on certain determinations
10 and rulings. And I've -- and the reason that I originally
11 asked for a stay was because I thought that we might have a
12 chance to get it done in a timely fashion.

13 I heard back from the Internal Revenue Service
14 yesterday, and they haven't taken action yet because there is
15 some discrepancy about how much the fee should be. So that's
16 not resolved yet.

17 But I also heard back from the Department of Labor and
18 a gentleman from the Department of Labor, a Mr. Kevin Horahan,
19 he's Senior Employee Benefits Law Specialist and he appears to
20 be an attorney. He suggested that perhaps we didn't need a new
21 ruling, and what he did was send me a copy and referred me to
22 what is 26 CFR 54.4980B. And I sent a copy of this to Mr. Carl
23 Tullson, who I believe also is one of the attorneys; he's the
24 one I've been in contact with for Delphi. Because I -- the
25 language in this is quite specific. And I don't -- is it

1 possible they have a copy of this in the courtroom there, so
2 that I wouldn't necessarily burden the Court with my reading it
3 all?

4 THE COURT: Well, I don't have a copy of this.

5 MR. SUMPTER: Okay.

6 MR. BUTLER: Can I have one moment, Your Honor?

7 THE COURT: They're looking for it.

8 MR. SUMPTER: Okay.

9 (Pause)

10 MR. BUTLER: We're trying to locate it, Your Honor,
11 just give me one minute.

12 THE COURT: Okay. If they can't find it, I'll ask you
13 to read it.

14 MR. SUMPTER: Okay.

15 THE COURT: But they're looking for it. Give it a
16 little more time.

17 MR. SUMPTER: Okay.

18 (Pause)

19 MR. BUTLER: Your Honor --

20 MR. SUMPTER: If you have it, turn to page 295-296.

21 MR. BUTLER: Right. Your Honor, what we have is --
22 Your Honor, the -- just for the record, the exhibit number has
23 been marked Exhibit 342. And it is the regs which we we'll
24 present to you and is the specific page he wants to refer to.

25 THE COURT: Okay. And so you, sir, you said it was

1 what page? What, 2 --

2 MR. SUMPTER: 295.

3 THE COURT: Okay.

4 MR. SUMPTER: And it's an objection at 54.4980B-4.

5 THE COURT: Right, I have that in front of me now.

6 MR. SUMPTER: Okay. And so then there's a part of
7 interest, it's under question and answer one, but down a bit
8 further than 6 which is near the bottom of the page.

9 THE COURT: Right. "A proceeding in bankruptcy under
10 Title 11 of the United States Code"?

11 MR. SUMPTER: Yes.

12 THE COURT: "With respect to an employer from whose
13 employment a covered employee retired at any time"?

14 MR. SUMPTER: Yes. And then goes on to talk about it
15 and it ends on page 296. But there is no time limit on this
16 employee -- this event, a lot's been covered after this
17 bankruptcy. The twelve months, according to Mr. Horahan is a
18 safe harbor for retirees, it kind of covers another situation
19 which continues on and is in the objection, I think it's on
20 page -- from 295 on to page 296. But I contend that Delphi has
21 misread that statute and I think that the history of that
22 statute would support that. I -- you know, if you get a chance
23 to read that detail I think you'd perhaps see what Mr. Horahan
24 was talking about.

25 But I also went back and found some legislative

1 history, and some congressional reports, and this you don't
2 have, I'm just going to mention it by reference, that this
3 (indiscernible) to provide whatever else. But there's a CRF
4 issue brief, which is ID 87182, which is essentially
5 contemporaneous with the time that these laws were being
6 written in 1986 through '88. And primarily responds to the LTV
7 bankruptcy. And these -- there were three laws were written to
8 address the protection of employee and retirees particular
9 benefits in bankruptcy circumstances.

10 And I also have Senate report number 105-31, Report on
11 Aging. And I also have a -- I guess a congressional record
12 which is defined as 133 Congressional Record H-8519, which was
13 on October 13, 1987, page 62 of that document. It was actually
14 a comment by Congressman Rodino that introduced -- in
15 particular related to 100-334. And he has a similar role also
16 in Public Law 99-509, which stipulated the COBRA benefits for
17 bankrupt retirees. And he gave the motivation for Congress in
18 that respect. And there are a number of others --

19 THE COURT: But do any of those deal with the time
20 issue?

21 MR. SUMPTER: Yes. They say -- a couple of them
22 repeat the clause just as you have in there. But others simply
23 say that if the benefit is reduced or terminated in a
24 bankruptcy then it results in lifetime COBRA benefits for
25 retirees.

1 THE COURT: Okay.

2 MR. SUMPTER: And another point I wanted to make and I
3 did make it in the motion that I filed, it was in fact that the
4 debtor asserts that it was only for twelve months before the
5 proceeding and then twelve months after the proceeding, then it
6 will provide no protection for retirees at all because a debtor
7 could wait until one day past twelve months and not have any
8 kind of obligation. These events took place at a time when
9 Congress was dealing with the LTV bankruptcy, I think there was
10 a temporary law that was passed and extended three times. And,
11 in fact, it expired before, I think it was -- I'm not sure --
12 100-344 was passed -- I'm not sure about the length of time
13 before Public Law 100-344 was passed. And that had to be a
14 time that was far beyond the twelve months that the debtor
15 talked about. And it would have made these COBRA protections
16 moot.

17 But I think there's a history of it. But, also the he
18 documentation of what the congressional intent was and they --
19 continue to try to globally cover the retirement benefits and
20 expand as well.

21 And, so, the debtors' interpretation is contrary to
22 that. And so I believe that they are still responsible for
23 their COBRA obligations. And to the extent that they still
24 mark to the company or transfer assets, there is another
25 regulation with I cite in my document that says that those

1 COBRA obligations go the successor. So that's why I've asked
2 the Court to enforce Delphi's obligations for retroactive COBRA
3 responsibilities back to April 1st and continuing on and to
4 make all those companies that are involved in these
5 transactions aware that there is this COBRA liability out
6 there, which makes me think that some parts of these agreements
7 may have to be reworked. And that was my concern that if it's
8 comprehended in the -- somehow in this modified plan.

9 THE COURT: Okay.

10 MR. SUMPTER: And then I propose further that from a
11 retiree perspective that I have an exhibit in my -- but see
12 where I did is show what the -- what I project the value of
13 this COBRA expenses to be based on what the current non-COBRA
14 expenses are versus the current COBRA expenses. And I show my
15 assumptions in this also, so I'm assuming that each retiree has
16 the -- the average life expectancy from this point for each
17 retirees is thirty years. And so I recognize that there are
18 assumptions that could be negotiated. But based on that, the
19 future value for these COBRA healthcare benefits is 532 million
20 dollars and probably change -- another 159,000 plus added to
21 that.

22 And I also wanted to point out there's 100 dollar a
23 day per retiree charge or excise tax that's been set by the
24 IRS. So that, basically, Delphi I think, is accumulating a
25 600,000 dollar excise tax liability for not providing COBRA

1 benefits. And by my calculations it's around seventy-two
2 million dollars as of today.

3 THE COURT: Okay, Mr. Butler?

4 MR. BUTLER: Your Honor, question answer A-1 of
5 Treasury Regulation Section 54.4980B-4, which is the section
6 that was given to you by Mr. Sumpter, page 295 -- starting page
7 295. If you look at the beginning of that section, the
8 beginning of the answer A-1, it sets forth details about what
9 constitutes a qualifying event and describes and I quote "as an
10 event that satisfies paragraphs B, C and D of this question and
11 answer A-1".

12 Mr. Sumpter pointed Your Honor to the bottom of page
13 294 and to bankruptcy being a qualifying event. That would
14 satisfy paragraph B. What he did not talk about was the
15 paragraphs C and D, both of which have to be dealt with as Q
16 answers A-1 indicates. Paragraph C describes an event that is
17 a loss of coverage which is quote "An increase in the premium
18 or contribution must be paid by a covered employee that results
19 from the occurrence of one of the events listed in paragraph B
20 of this Q and A-1, which would be a termination of employment."

21 Paragraph C goes on on the top of page 296, "To
22 clarify that a loss of coverage need not occur immediately
23 after the event, so long as the 'loss of coverage occurs before
24 the end of the maximum coverage period.' The maximum coverage
25 period for a retiree with a loss of coverage outside of the

1 twenty-four month period is eighteen months from the date of
2 retirement." And if you look at what would give rise to a
3 lifetime claim, both the section in the middle of the left-hand
4 column of page 296, that paragraph C language as well as the
5 actual statute, Code Section 4980(f)(3)(b) provides That loss
6 of coverage for a retiree means "a substantial limitation of
7 coverage that occurs 'within one year' before or after the date
8 of commencement of a bankruptcy proceeding," i.e., the twenty-
9 four month period." So the reg here, and you can see that
10 reference, Your Honor, right in the middle of -- it's about
11 twelve lines down in the left-hand column on page 296 of the
12 reg. So as you would expect, the reg does tack the code
13 section. And it would provide that if you had a qualifying
14 event relating to bankruptcy proceeding there would be the
15 potential for lifetime coverage, or at least the assertion
16 there would be the potential for lifetime coverage. But if
17 you're outside of that twenty-four month window, there is an
18 eighteen month limitation in toto. And, so, Your Honor, I
19 think, again, we've argued all of this at the OPEB termination
20 motion, but the reality here is that the OPEB termination here
21 occurred outside of the twenty-four month window as
22 contemplated by the statute, as also contemplated by these
23 regs. And I believe that Mr. Sumpter's objection is without
24 merit.

25 The debtors believe, first, it's barred under the

1 principles of res judicata. Second, as I pointed out to you by
2 both the statute and the reg, including the reg that
3 Mr. Sumpter chose to call to your attention. Unfortunately,
4 these -- the fact pattern of this case simply doesn't qualify.

5 THE COURT: Okay. Anything else?

6 MR. SUMPTER: Your Honor, if I could just make one
7 comment?

8 THE COURT: Sure.

9 MR. SUMPTER: I take exception with the interpretation
10 that the debtor has about that twelve month before or after. I
11 thought that's a convenient or useful interpretation for the
12 debtor. But that's not what that clause means; it's not what's
13 been reflected in the congressional record, that's not what was
14 told to me by the Department of Labor. I thought that
15 (indiscernible) the evidentiary stands.

16 But that twelve months only modifies the prepositions
17 before, it does not modify the preposition after. And so it
18 means the twelve month before bankruptcy or anytime after. And
19 then according to the Department of Labor all that is a safe
20 harbor for retirees, and it does not put the constraints he
21 insists, as I read it to that any loss of coverage, which
22 includes this reduction during bankruptcy, is a qualifying
23 event.

24 So I'm going through the process of having the
25 Internal Revenue issue a more definitive order, even though the

1 Department of Labor may not find that necessary. But as I
2 pointed out in court as you look at this, I don't think that
3 from my understanding the -- this obligation will continue and
4 the excise tax is going to continue to accrue. I think it's a
5 benefit to Delphi to address this matter, make those
6 retroactive payments and stop the bleeding.

7 THE COURT: Okay. I'll rule on this in the morning.

8 MR. BUTLER: Okay.

9 THE COURT: I understand your argument, Mr. Sumpter, I
10 just want to look at the statute again one last time before I
11 rule.

12 MR. SUMPTER: All right.

13 MR. BUTLER: Your Honor, I believe that's the last of
14 the objections that people are pressing today unless somebody
15 is raising another objection. I did hear Your Honor indicate a
16 ruling tomorrow morning. We are continuing to work on the form
17 of order and the final form of plan modifications as indicated
18 earlier. My authority by the board of directors and I believe
19 by the parties to the MDA both require that the form be
20 mutually agreeable to them. We're close but we're not finished
21 yet. I've been on the record now, as Your Honor has, for nine
22 hours or something like that.

23 THE COURT: I thought this would give you some time to
24 finish that up.

25 MR. BUTLER: So I take indication from Your Honor that

1 we should get that completed before Your Honor rules on this
2 objection. And we'd like to make a --

3 THE COURT: Well, I could rule on the objection. I
4 don't want to close everything until you have it completed.

5 MR. BUTLER: Right.

6 THE COURT: Until you have the order completed.

7 MR. BUTLER: And, Your Honor, there are few matters
8 left including business judgment, a couple of other showings we
9 need to make under 1127. And at least one item on 1129 that I
10 need to address. But I'll do that in an abbreviated close.

11 THE COURT: All right. I mean, I have reviewed the
12 declarations again. And am certainly familiar with the
13 debtors' financial condition. I'm also familiar as set forth
14 in Mr. Sheehan's declarations with the debtors' efforts to
15 market themselves, including the auction process. So I don't
16 think you're going to have to say much more, if anything, on
17 the debtors' determination to enter into this agreement with GM
18 and the DIP lenders. To me it seems a valid exercise of
19 business judgment under the circumstances. But if you want to
20 have anything more on the record, that's fine. But I believe
21 the description by Mr. Sheehan and Mr. Shore of the debtors'
22 consideration of alternatives and of the sale process of the
23 mediation process and of the auction, is sufficient to show
24 that the debtors are pursuing a path that's consistent with good
25 business judgment.

1 MR. BUTLER: Thank you, Your Honor. What time do you
2 want us back?

3 THE COURT: Well, it's kind of up to you. I know you
4 all have a propensity to work through the night even on
5 Sundays. And I'm not encouraging that you do that. So just
6 give me a sense. I don't have anything else scheduled for
7 tomorrow, so I can begin at 10, I can begin at 11, I can begin
8 at 9:30, it's up to you.

9 MR. BUTLER: Can you just give us a moment, Your
10 Honor?

11 MR. SUMPTER: Your Honor, this is James Sumpter. Can
12 I ask --

13 THE COURT: You can appear by phone tomorrow so that
14 you can hear my ruling.

15 MR. SUMPTER: Okay.

16 THE COURT: So you should contact the same number or
17 the same -- you should go through the same process that you did
18 today --

19 MR. SUMPTER: All right.

20 THE COURT: -- to get on the phone for tomorrow.

21 MR. SUMPTER: Okay.

22 THE COURT: Okay.

23 MR. SUMPTER: Could I ask one other question?

24 THE COURT: Sure.

25 MR. SUMPTER: I've referenced a couple of documents

1 that I have not had opportunity to make available to the Court.

2 Is it useful or proper that I submit those --

3 THE COURT: Well, if the documents are matters of
4 public record, like the congressional record or Senate report
5 you can e-mail those to me.

6 MR. SUMPTER: Yes.

7 THE COURT: That's fine. You should also e-mail them
8 to whoever you've been sending them to at Skadden Arps.

9 MR. SUMPTER: Right.

10 THE COURT: Okay.

11 MR. SUMPTER: Okay. All right. Let me confirm one
12 thing on that e-mail address. I had sent those letters to
13 Mr. Lightner before --

14 THE COURT: Yeah, that's fine.

15 MR. SUMPTER: Okay. You can give me --

16 THE COURT: Well, let me give you that
17 rdd.chambers@nysb.uscourts.gov.

18 MR. SUMPTER: Okay.

19 THE COURT: Thanks.

20 MR. SUMPTER: All right. Thank you.

21 MR. BUTLER: Your Honor, I consulted with counsel. I
22 think we'd like to tentatively recess until 10 o'clock tomorrow
23 morning. If for some reason we can't be ready by 10 we'll
24 advise chambers. But I think people would like to be concluded
25 with this and we'll endeavor to have everything finished by

1 that time.

2 One point that I'd like to do tonight, which I think I
3 can do unless someone thinks that I'm making a mistake, but I
4 think this is the correct thing to do. Which is our
5 evidentiary record is complete. And all the objections are in.
6 An, so, Your Honor, the only thing I have left is a reservation
7 of rights by our board that requires that we get a suitable
8 form of order.

9 THE COURT: Okay.

10 MR. BUTLER: And that's the only thing I've got left.
11 So unless Your Honor has some reason that you think we
12 shouldn't do this, I think I'd like to close the evidentiary
13 record tonight so we've got a complete record, and we'll deal
14 with argument tomorrow, if there is any, if that makes sense.

15 THE COURT: Well, there's conceivably an evidentiary
16 record on this order, that's the only thing that would remain
17 open as far as I can see.

18 MR. BUTLER: Right. Aside from that, Your Honor, I
19 think --

20 THE COURT: Mr. Abrams?

21 MR. ABRAMS: Your Honor, I just rose to indicate that
22 we would support Mr. Butler's approach subject to Your Honor's
23 limited qualification with respect to the order itself.

24 THE COURT: All right. I agree, I think that's
25 appropriate. The evidentiary record is closed. The only thing

1 I'm reserving on is my ruling on Mr. Sumpter's objection and
2 review of the final version of the -- final proposed version of
3 the order.

4 MR. BUTLER: Right. As I said, Your Honor, I also
5 will give and I take Your Honor's guidance to heart, I may have
6 a few closing comments, but they will be abbreviated.

7 THE COURT: All right, that's fine. Thank you.

8 MR. BUTLER: Thanks, Judge.

9 THE COURT: And, again, you can leave your exhibits
10 and charts.

11 MR. BUTLER: Thank you.

12 THE COURT: Mr. Sumpter, I'll be back on the record at
13 10 tomorrow.

14 MR. SUMPTER: All right, thank you.

15 (Proceedings concluded at 7:21 PM)

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I N D E X

E X H I B I T S

PARTY	NO	DESCRIPTION	ID.	EVID.
		634 Various Joint Exhibit documents		25

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C E R T I F I C A T I O N

I, Clara Rubin, certify that the foregoing transcript is a true
and accurate record of the proceedings.

Clara Rubin

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